

## FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE <b>NEW YORK</b>	OFFICE OF ORIGIN <b>LOS ANGELES</b>	DATE <b>SEP 26 1972</b>	INVESTIGATIVE PERIOD <b>9/22/72</b>
TITLE OF CASE <b>DANIEL ELLSBERG; ANTHONY JOSEPH RUSSO, JR.</b>		REPORT MADE BY <b>[REDACTED]</b>	TYPED BY <b>ECB</b>
		CHARACTER OF CASE <b>CONSPIRACY; TGP; ESPIONAGE</b>	

REFERENCE:

LA teletype to Bureau, 9/21/72.

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ADMINISTRATIVE:

Three copies of this report are being designated for BS and view of possible dissemination to USAs in their respective districts. This communication copy is being designated for WFO in view of that office's investigative interest in this matter.

Investigative period for this report only refers to file review regarding [REDACTED] NYO investigation relating to McLEK will be handled by other communications.

ACCOMPLISHMENTS CLAIMED					<input type="checkbox"/> NONE	ACQUIT-TALS	CASE HAS BEEN:
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							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO

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## Dissemination Record of Attached Report

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Notations

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UNITED STATES GOVERNMENT

# Memorandum

TO : ACTING DIRECTOR (65-74060)

DATE: 11/8/72

FROM : SAC, LAS VEGAS (62-742)

SUBJECT: MC LEK  
SIO

Re Bureau airtel dated 9/20/72.

Enclosed for Bureau are five copies of an LHM concerning speech made by DANIEL ELLSBERG at the University of Nevada, Las Vegas (UNLV), on 9/28/72. Enclosed for Los Angeles is one copy of LHM.

It is to be noted that during speech in the Student Union Building at UNLV the air conditioning system was off and the hall became warm and uncomfortable. This caused a lot of stirring around by those present making it difficult to get a clear recording of his speech.

Also attached to this communication are two copies of an article appearing in the Las Vegas "Review Journal" issue of 9/29/72, on page 1, concerning speech by ELLSBERG.

*arg*  
**ENCLOSURE**

- 2 - Bureau (Enc. 5)
  - 1 - Los Angeles (105-27952)(Enc. 1)
  - 1 - Las Vegas
- LES:bsh  
(4)

REC-47 65-74060-4073

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*1 cc of 1st  
newspaper clipping EX-117  
to AAG, 200  
11/12/72  
gm*

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UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to  
File No.

Las Vegas, Nevada

November 8, 1972

DANIEL ELLSBERG

On September 28, 1972, Mr. Daniel Ellsberg gave a talk at the University of Nevada, Las Vegas, in their Student Union Building auditorium.

The speech was recorded by [REDACTED]  
[REDACTED] using the following recording equipment:

[REDACTED]

A transcription of the speech is as follows and is set out verbatim except where unintelligible in which case a blank space is set out:

65-74060-4073  
ENCLOSURE



We're approaching an anniversary so far as I'm concerned on Saturday, September 30th. It will be the third anniversary for me since the day that I decided to start copying the Pentagon Papers. And given at first to the Senate Foreign Relations Committee, which I did in November. ♦ It was a year and a half later before (cough) got that information which, of course, I'd hoped would come much earlier in appearing. And two invasions more to take the place, by that time, so it was not too urgent.

It's also another kind of strange anniversary. ANTHONY LEWIS in the New York Times recently pointed out that from Pearl Harbor to the end of the surrender of the Japanese in World War II, was three years eight months and one week. This Saturday will mark three years, eight months and one week of the Vietnam war as conducted by RICHARD NIXON. And during that time he's dropped twice as many bombs on Indochina as we dropped in all the theaters of World War II, in that same period of time. I know that  
4MT to have dropped four million tons of bombs compared to two million in World War II. Added to the 3.2 million

1 MT since Jan '71?



tons that LYNDON JOHNSON dropped, we will have dropped in the last seven years since 1965, as much as all we dropped in the Korean War, which was one million tons, plus three times World War II. Seven million tons of bombs. But the war didn't start in 1965, which is when I left Vietnam. In fact I left in August, 1965. It didn't start in 1961, but we sent advisors. I went in the first week, I guess, uh. I was in Vietnam in 1961.

In September, that is another anniversary for me, it didn't start in 1954. I couldn't have passed the test when I was in the Government as to when it did start, for us, one hour ago it really did start. But as a matter of fact that relation to the surrender of Japan in World War II happens to be very relevant. Because the starting place in this history of our involvement really did begin just almost exactly at the time Japan surrendered in World War II. Japan at that point was controlling Indochina. They had imprisoned the French in Indochina as of March of 1945.

It was only a few years ago, after I'd been to Vietnam for a couple of years, a Vietnamese friend of mine, LONG VON CHIE (phonetic), remarked to me, "You know, from the point of view of all Vietnamese, we got our independence in March of 1945 and the French started to reconquer us two years later. Now that's a remark that really didn't



mean much to me at the time, I didn't know much about history. I'd managed to work three years directly myself on Vietnam and elsewhere on that kind of history.

And I'm gonna talk a little about that kind of background tonight, because I think there's really no facts that there are to be learned more than these "secrets of history", that bear more directly on what's happening today and how we should understand it, and what's going to happen, what should happen, what we have a right to do in Vietnam.

When you and I watch the evening news as this friend, when we see the fighting flare up again in Vietnam, we see it through lenses, of historical assumptions, as to what that country is, who the Vietnamese are, what are those whose been. And in nearly every case the lenses of the viewers are myths, distortions, based on deliberate lies by our Government. Our Government is not the only country to lie to it's citizens. In fact, virtually every country does. We may well do less of it than most countries in the world. I want to put it to you that we do a great deal more than is healthy for a democracy and a very great deal more than is healthy for the Indochinese. In fact,



it's bad enough whichever way you look at it; this country or that. We're not bombing America yet. The 12 million tons of explosives we dropped, almost 13 million now, artillery and bombs that we've dropped in the last seven years has created 12 million killed, wounded or refugees during that period. Six million in the last 3½ years to widen the boundaries of war. That's an incredible figure. I won't take time tonight, I figure if I asked you I would not have gotten that figure from many people. I'm sorry to say, I don't think there are many Americans who are really aware of it. I won't even take time to, to validate it for you or break it down too much because I want to talk about some other problems. I will say briefly that that figure is based on official sources, refugee figures from Chinese subcommittees, which tell us four million refugees were created in the last 3½ years, another two million in Cambodia and almost two million in South Vietnam, and two million people killed and wounded. Six million victims altogether in this last phase of the war which is by no means over.

The figures I've shown you just come from the Pentagon and I have the sources if anybody would like to follow it up after this.



HO CHI MINH declared at that point that the Vietnam forces in Hanoi, the Democratic Republic of Vietnam can be for sure bombed out. Formerly advocated in that month of August, 1945, the month of the atom bomb over Japan, advocated his power to that President HO CHI MINH and took on the civilian name of VIN TWEE (phonetic) and title he accepted as Supreme Counselor to President HO CHI MINH. When he later went to Hong Kong about (cough) month later, that post of Supreme Counselor was taken by the Catholic Archbishop of Vietnam, who held it until 1949 when BACHHI (phonetic), the French, that is the French strategy came back, resumed his own militia title as Emperor and served as a Republic of the French. As a more, the cat's paw, for the French effort at military conquest of the country. But between August of 1945 and December, 1946, HO CHI MINH ruled in the Northern part of Vietnam, which was then and now regarded by all Vietnamese as one country, as the undisputed Head of State of that country. It's all very ancient history, Right?

I'm admitting my own ignorance of the complicity at what I have to say. Working in the Defense Department of the State Department, I was not aware of this history. I was not aware HO CHI MINH received the honors of Head



of State in France in negotiations in July and August, 1945. The negotiations had to do with the French implementation of an agreement they posed in March of '46, to decide the unification, total unification, by a referendum in the South. The South at that time was still occupied by French forces, the North forces. The French never did carry out that implementation, and in November, 1946, the French provoked incidents in the harbor of Hai Phong which led them to give an ultimatum to the Vietnam forces. The police were controlling the city, and when that was not carried out the French warships bombed and then shelled, and then the French planes bombed Hai Phong and killed by their count 6,000 people.

The paragraphs striking that incident by the way, is the first chronologically, is the first bit of one's state to be censored by the Government's version of the Pentagon Papers. version which is really quite complete on the Pentagon Papers, with the exception of a page here and a page there. And now it happens to be the first piece of information that the Government censors, thought the public wasn't yet ready to know, what the French did in November of



'46, which actually led to the outbreak of hostilities.

One other item that I read this month, three years ago, I finished reading the Pentagon Papers, I put off (Can you hear me back there? Can you hear me all right? In the back? Answers: No. Is this better? Can you? How about this? Better? Raise your hands or whatever if you can't hear me) I mentioned something, I was talking about to some of the students and other people at dinner. I really had never spent so much time in public over the last year talking about the contents of the Pentagon Papers, so I think from the time that they came out, back over a year ago, I took the attitude in public, "Look, I read these as an expert for the Government". But the time has passed for experts to be your source of information on this. We're all in this, this war is going on. The papers are available now. It's time for you to become experts, for everybody. An expert I read once, is a man who has read a book that no one else has read. (laughter)

In September, 1965, there were two experts on the history of the Vietnam war. There were two of us who had read the entire study, so I really spent all my time practically in the last year publicly saying, "Don't ask me what the Pentagon Papers say. Don't tell



me to tell, ask me to tell you what's in ~~the~~ <sup>the</sup>. Read them." Well I have to go back on that year, and say I think I was somewhat mistaken about them. They haven't been read very much as you know. How many people here read a sizeable amount, let's say of  book in the New York Times. That's not bad. How many have held in their hands or read a significant amount of the prevaility (phonetic) that can be compressed in a four volume edition of the whole Pentagon Papers. No one? Well that is his claim but not exactly surprising because, be prepared for this, just informed me they sold 3,000 sets of that in the country, including libraries, so I really can't kick myself at this point that they are familiar.

Furthermore, I am going to spend a little more time, for the first time this evening, telling you a few things to change my . Just pass it on as a basis for discussion. Where do we go from here?

As I say, I myself put all this earliest history until last. I thought it was least relevant and I didn't get around to it. I served in the Government in '64 and '65 period in the Defense Department, later in Vietnam in '65 and '67, so I knew that period quite



well. When the study of the Pentagon Papers began

But when it began around September the tenth of 1967, I chose the '61 period. To study I did the first draft of the volume of that period. Because it was the part I didn't know much about and I wanted to learn more.

And I'll get to that in a moment. But as I say it wasn't really until two years later involving other studies not by 35 or 36 other people began to come available. They were given to me as authorized access. I was the only person to have this access and as I read then trying to learn lessons for the Government in South Vietnam by experience. I came across this verbious (phonetic) message on the outbreak of war in Vietnam, among other things.

After that incident in Hai Phong, a month later fighting broke out in the outskirts of Hanoi and the Viet Nhim (phonetic), who as I say, controlled the country as the legitimate government of Vietnam, for a year and a half. Began to conduct fighting withdrawals, a scorched earth policy as the French began their military invasion and attempt to reconquer the country.

Let me summarize quickly, by the way, what that first volume of the history told me, it was news to me.



But what he had begun participating in fighting in 1964 and 1965 what we started in '61. Is not an insurgent movement, let's say, but led by the equivalent to the twelve men that FIDEL CASTRO took ashore and went up to Sierra Miestra and began fighting against Batista. The Government we were fighting was the Government that had had control of the capitol, the post office, the Civil Service, the police (though), the telephone system; they had run the country in every respect, between August of '45 and December of 1946 for a year and a half. That told me a good deal about the legitimacy of our battling in attempt to reconquer that country by the French and also the promise of them. The prospects began to tell me a good deal about why that war wasn't seeming to be won year after year; why it seemed to be so difficult to do, what we used to say was quote "uproot" these people from their country.

In any case, I'm like most other people I think, if they're under the impression one had kept this thing year after year, no matter how we got it, was the mistaken belief that on one hand we were there with good intentions and perhaps that was right, a legitimate effort. But the mistaken belief is that we're about to win.



The President had been misled, the President had been told that this stuff or that stuff, as ARTHUR SHLESSINGER has put it, would be the last that was necessary. Before I called, in an article in this book that I wrote recently, Papers on the War, the quagmire model of our involvement, one step after another, each one promised to be the last, each one believed to be the last that would be necessary. And then we woke up and found we had gotten into this fog and no way out and again one step further into it.

It is very corporable (phonetic), I believe it, not only in '65 but when I started the study of the Pentagon Papers in '67. The only thing wrong with it I found, was it is totally mistaken for every decision of the 25 years. Let's go back to the first one.

Perception of the war is very hard. Four days after that fighting broke out in Hanoi, JOHN CARTER VINCENT, Director of the Bureau of Far Eastern Affairs, a position that is one he held twenty years later, said the (cough) Undersecretary DEAN ACHESON, which said this, "Although the French in Indochina have made far reaching paper concessions to the Vietnamese desire for autonomy, French actions on the scene have been directed toward whittling down powers and territory of the Vietnam free





yet entirely begun directly to help the French with their little problem that they didn't have the military strength to reconquer the country. It was by the way, almost the only effect, the only attempt, in postwar history for a former Colonial Power to try to recapture an independent Colony, former colony. The Dutch tried to do it briefly in Indonesia and mainly because we stopped them. But in fact, we didn't stop them, first because we needed them in NATO, and later, I think, for other reasons. But in '48, before we got in fully, although we already knew they were channeling our aid of Europe into Indochina. This is the official State Department's policy analysis of Indochina. September 27th, yesterday, September 27th, 1948, since VJ Day the majority of people of the area, the Vietnamese, stubbornly resisted the re-establishment of French authority. The struggle in which we are trying to maintain, so far as possible, the position of non-support to either party. We went on to say, of course we know the French are channeling our aid to France into Indochina and when we talked about a neutral position of non-support for either party, that was not exactly consistent with our general policy of anti-colonialism.



But nevertheless it goes on. We have not urged the French to negotiate with HO CHI MINH even though he probably is now supported by a considerable majority of the Vietnamese people. Because of his record as a Communist, and a Communist background with many of the influential figures in and above his Government.

Other cables in the Pentagon Papers in this same period report a paradox, that although we knew HO CHI MINH was Communist he appeared to be the only one in Asia who had no communication so far as we could tell with either Moscow or Peking. The Chinese Communists had not yet taken over in China, but seemed to have no communications with the Chinese Communists, certainly from the Kremlin, and this was an announcement that was the word that was used.

Our greatest difficulty in talking with the French and stressing what should and should not be done and our inability to suggest any practicable solution of the Indochina fumble. As we are all too aware of the unpleasant fact that Communist HO CHI MINH is the strongest and perhaps the ablest figure in Indochina, and any suggested solution which excludes him is an expedient of uncertain outcome. We are naturally hesitant to press

the French too strongly or to become deeply involved so long as we are not in the position to suggest a solution or totally are prepared to accept the onness (phonetic) of intervention.

I've read those paragraphs in the editorial board of the New York Times not so long ago, and said, "Look, I don't want to be patronizing and read stuff to you, but your editorial this morning, the morning I had been scheduled to talk to them, made the statement that we had a course against our involvement at this point, that we had of course, entered with good intentions, the best of intentions, but the time had come, you know, to break it down." And I said, "Look, let me read these to you and you explain to me how you get good intentions out of that".

We were in fact, in 1950, when the French could no longer maintain that war without our direct assistance, we provided the direct assistance; starting in May of 1950, two months and two weeks before the Korean War. So we were directly supporting with napalm, with ammunition, with money, what we recognized very clearly is a French attempt at the military reconquest of a former col-- country, former colony, which was then being governed



by an elected Government by that time, elections in 1946, which our estimates said, without exception was the Government supported by the great majority of the Vietnamese people. We in short were fighting the majority of Vietnamese people. Where is the good intention? At which point they said, they really said to the "Arab", "Well, that's old history". (laughter) That's it. History. He said, "But I'm referring to your sentence, you choose in an editorial this morning to devote space in that editorial to a statement of history which you seemed to think was relevant, only it happens to be flatly wrong. And it is relevant, and the fact that it's wrong means that you perpetuate the myth that has kept us in 25 years and is keeping us in right now. Because now it is legitimate to react to what we're seeing in Vietnam, to do in Vietnam right now, depends very much on the words that the commentators and the President use when they interpret those fleeing figures at Quang Tri, those shells that are coming down in An Lock, and Lock Nick (phonetic) and Quang Tri. Is it in fact, as they keep saying, an invasion, an aggression? Are there two neighboring, sovereign countries, one's which we are allied? And the other of which is aggressively

invading the one to which we're committed? Those are the terms, those are the lengths which we interpret.

If those words are correct, and the Times and everybody else and MC GOVERN can't be correct in telling us to get out. It would be indeed, as the President suggests dishonorable to get out. We would be dishonoring an allegedly a commitment, to be abandoning an allies there, so a great deal depends on how you get this story, what this war is all about.

Well we have to go to a slightly later period of history, another administration, now a Republican one. 1954, President EISENHOWER decided not to take over what the French actual direct combat role, what our napalm could no longer accomplish, what our bombs. When only U.S. troops could protect the French position there, President EISENHOWER rejected vice-president NIXON's proposal to send combat troops in and accepted the Geneva Accord. I was watching that with mixed feelings, I was on a Marine drill ground the morning in May of 1954 when our drill sergeant said our rifles had better be clean which is kind of a rhetorical point. (laughter) Are your rifles clean? They said "no". silly question.



but he said Dien Bren Phu (phonetic) just fell and Marines were off shore at that time, Vice-president NIXON had proposed that we send them ashore. But President EISENHOWER decided left them out, thank God, at that time it was the only war we had, Korea was over.

(Laughter and applause)

That's why I was in the Marines, he says, "that's why all the rest of us here enlisted in the Marines, so we were a little smarter, I guess". (laughter) But it was not, Vietnam stayed around for quite a while. I was about to go over there some years later.

But we understood a new we keep hearing that we didn't sign the Treaty of Accords, it's not what we mention, but don't mention we signed the Treaty of Accords. They all gave a set of unilateral undertakings of that court, which are binding in international law. This happened the day after the French and the Vietnam signed a military armistice providing the two regroupment areas temporarily with flat explicit statement that this was not to be political division, it was not to be (cough) but was to be a regrouping area prior to the Government of Vietnam. -Not a North or a South Vietnam, a Government of Vietnam,

to be determined in elections in 1956. We undertook not to overturn those accords by force. But that was in June of 1954. In August of 1954, the Pentagon Papers will show and I read about this time in the newspaper, the NSC meeting determined that we would do whatever was necessary, whatever was in our power to prevent the taking place of elections. Every estimate we had was that these would be elections that would put a Communist government in power in that particular country. We keep saying the Communists would never come to power by an election we keep saying that, but all of our experts told us that this would be the time, and we were determined that would not take place. So we bought an army and a police force and prisons, four dictators selected mainly by us, whose main qualification for our support was his determination not to honor the Accords, and his willingness to use that army and police force to repress by violence and threat and imprisonment, every element in Vietnam, and there were a lot more elements besides the Communists are concerned. Every element in Vietnam it wanted to honor those Accords, and to bring about a unified Government. It succeeded, that is, we succeeded in doing that. By our use of force in violation of arms and NIXON. Our policy became what the Nuremberg Principles brought up, drafted by this country



and ratified by U.N.

defined as a

crime against the Jews. That's how I read it at least.

That's how, I'm not a lawyer, but that's how every international lawyer that I've talked to, there aren't that many, I'll agree with this, but people like RICHARD FALK (phonetic) can tell for sure. That's how they read it; that's where we've been for this period. Given this documentary evidence in the actual beginning (tape changed)

...is very very bad, that the dictator we have chosen was about to be overthrown, one way or another, and not by Communists. It was a race, really to see who would overthrow him first, the Buddhists, his own army, students, whatever. Maybe the Communists; they weren't ready yet, though. As a matter of fact, we were looking at limited war research at that point. We had a star witness on the task force who told us of this guy was one of the inventors of the lie detector, so he was always looking for uses for the lie detectors. (laughter) And he said when he heard about these little problems of a, of a telling the good guys from the bad guys, since they were in Vietnam. (laughter) He said lie detectors are your obvious solution and he couldn't talk there was a strange coolness in

He couldn't seem to turn them off on this subject, kept

pressing and pressing on it. He said for instance he had a problem with leaks in the army, the Vietnamese army. You know it's riddled with Communists, they get all the information we have before and this remains true to this day. He said so what you need is lie detectors,

OK, I'll tell you why we can use lie detectors. If we gave lie detectors to the Vietnamese, the first thing they'd do is use it to find out which are our Agents. (laughter) Whether they were born Communists or direct U.S. Agents in the eyes of the general staff is a very interesting question. (laughter) It's like the FBI and the Communist Party. (laughter)

Anyway, I was a little surprised to come back. I didn't follow Vietnam from that time on for seven years. I read in the papers as everyone else did that the TAYLOR

after us had decided what was needed was advisors that would do the job, which was friendly, surprisingly, because we hadn't heard anything like that, when we were in Vietnam just a month earlier. Seemed odd. But I thought well TAYLOR must have forgiven

and he's an experienced military man, etc.

he had

I would say if he proposes notion piece of data,



in most American understanding of Vietnam War, basically is quite quagmire notion, subject to deception, that somehow JOHN F. KENNEDY was sold the idea that advisors would do the job. And that was the light at the end of the tunnel, was going to come from, plus a few helicopters and intelligence helpers and a few communicators etc. Despite the people we sent in, they add up to 16,000 men by the time but they wanted up and that was a mistake. Somehow optimistically, without paying much attention, he had come to believe that that was enough, he was wrong. By that time LYNDON JOHNSON decided on 16,000 men was true.

This is I began my study of the '61 period with, like I had told the people, it's the model

it's the quagmire quote which it comes from.

Well, I came up against some documents at this point. Not the newspaper columnist of the time, but who came up later to see what had led me to the memory that I had. The New York Times in that month of November 4th, after TAYLOR had come back, was saying this, after after TAYLOR had returned. The general declined to comment

directly on whether he would recommend sending U.S. combat troops against Vietnam forces. However, when he was reminded to say there was reminded at the airport that he had been interpreted as saying that no Vietnam's problem was not manpower, the general replied, "that is correct, it is a populous country". Officials said he was correct to interpret that General TAYLOR did not look favorably on the sending of U.S. combat troops at this time. Although some officials in the White House and the State and Defense Departments, I know some officials are known to favor the Facist American forces. There would be a considerable surprise here if General TAYLOR recommended such a move.

Let me trump ahead and we suspect.

He had recommended it four days earlier; nobody was surprised in the White House at what he did. First one of the Presidents known to be opposed to sending troops except as a last resort. While opposing the sending of American combat forces General TAYLOR is understood to say he would dispatch, if necessary, military conditions. On November 16, E. W. KENWORTHY (phonetic) in the New York Times reported that President KENNEDY had decided on the measures the U.S. had prepared to take to strengthen South Vietnam. The measures were to receive



final approval yesterday at a meeting of the National Security Council, closely followed the recommendations made by General MAXWELL TAYLOR, the President's military advisor. U.S. plans do not include the dispatching of combat units at this time.

There's a full series of other stories I should like to quote, all of which leave the direct impression from White House sources which really meant the President, background case in a background basis and other White House people, and some others that I didn't know at the time. If TAYLOR and ROCKFELTER (phonetic) had recommended against sending combat forces, they have offended advisors, the President was left to understand that that would be adequate for purposes in Vietnam. We're now talking now about what those purposes were and whether they were legitimate that was taken for granted. This happened to be the opposite of the truth. What recommended in

to cable, which by the way even ten years, or no, six years later in '67, was extremely difficult to get. We saw references to it; we had access in this study in principle, to everything the Defense Department, CIA gave us most things, the State gave us a great deal, we had asked for (cough) White House gave us something. We had everything in defense. We were not able to find a copy

of MAXWELL TAYLOR's cable in the Defense Department. The records were there but the cable wasn't. MC NAMARA opened his personal safe to us, because there was a note in the files, that the only copy was in Secretary MC NAMARA's personal file. And there the file was, but no cable was in it. Why this was I'm not entirely sure. After a couple of months we got from the White House, in finding a micro-film of this cable for purposes . The cable not only recommended combat troops, but said quote, "This is an essential action if we are to reverse the current downward trend of events". In fact quote, "I do not believe that our program to save South Vietnam will succeed without this".

No the impression, we're talking now about recommendations, just about incidents of course, but the impressions of a generation of historians lived with, along with the public, that the President's situation was seen by the President's advisors as one which could be handled by , helicopter troops and so forth. Define how serious the trouble was, define what the American people would be asked eventually to do in pursuit of this objective, define it as not very serious. But that was a lie and it was a lie about how many people we would eventually have to kill, and what the prospects were of



succeeding. Even assuming what those earlier messages that I read told me if we had any right to be there at all.

I often wondered really, who exactly those background sources were, they didn't give me that information though. I can't blame them. This confronted the VC as a research analyst for the Government, somebody who works at that point for ten years, plus three in the Marine Corps, for four, well three of those Presidents, later I worked for NIXON, the fourth.

A couple, one head committee rejected the move that on behalf all of his advisors said was essential for success in Vietnam, not just TAYLOR. Why after rejecting that did he send advisors, which is ridiculous, and why did he lie to the public, as to what the ultimate cost was likely to be and how serious the situation was, and what had been recommended to him. This is the public, not obviously the kind of public incident questioned in '67 and '68. One of the questions, by the way, of how that notion got out, since that's what the recommendation said.

It was quite a bit later that I got a clue on that point. My wife and I were sitting somewhere in Cambridge while I was involved in putting out the rest of the Pentagon Papers after the assumption against the Times

and Washington Post, so I was out of circulation for a week and I saw more television than I usually do.

And I found myself watching television, and watching MAXWELL TAYLOR being interviewed by MARK MC GOSKY. This was in June, 1971, ten years after the TAYLOR Rock Foundation. And I heard TAYLOR saying, "I did not recommend combat forces. I stressed we could bring in engineer forces, logistic forces that would work on logistics and help in the very serious port problem in 1961". Incidentally that the article and cable had said on that point was this. The extent to which the task force would engage in activities in the Delta would depend on further study of the problem there.

As reported in Saigon, I see considerable advantages in paying up this aspect of the task force mission. I am presently inclined to favor prohibition initially helped in the flood areas and subsequently used in any other area in South Vietnam where its resources can be used to give tangible support in its struggle against Viet Cong. However, the possibility of emphasizing the humanitarian issue will wane if we wait long in moving our forces or in making our stated purpose with the emergency conditions created by the fall. In other words the flood



waters are going down so let's get it over fast so we can save that part of the colony. So it goes on in '71 on television. Incidentally, I happen to know that the New York Times announced that they were about to give KENNEDY years in their account of the next day so I felt sure that this cable would at last be coming up. The next day I was sitting at the stop. HELL and don't say this (laughter) Since this was not a combat force I did not recommend anything other than three battalions of infantry, pardon me, three battalions of engineers. (laughter). And I must say this that I sat there thinking these guys think they have a license to lie that never quits. If you work for the President you have an unlimited license to lie, the President to lie to the public, ten years later, after the President is dead, ten years of combat, which lead to military conditions. Why they feel that, I can only speculate, I think it's a problem we deal with. I could go on. I certainly knew the years that I participated in '64 and '65, maybe I will for as not be too ambitious about this and telling things briefly that I knew about. When I worked at the Pentagon, that will just further define this problem. Secretary RUSK's statement to the Senate Foreign Relations Committee that the raids, the 34A Coburn operations raid, which preceded the alleged

attacks on our destroyers, one of which was the real attack, and one of which now turns out to not to have occurred.

1965, that happens to be the month I joined the Defense Department and was assigned to work on Vietnam. The first day that I can remember worked on Vietnam was the day I sat reading the cables on that alleged second attack. And I spent all that night on this in Assistant Secretary Office in Washington, read cables come in preparing for supposed retaliation that night. That was my introduction to Vietnam.

Now those supposedly had been preceded in fact by attacks on the North Vietnamese coast by supposedly South Vietnamese vessels, torpedo type in supplying for operation of plan 34A Coburn operations. Secretary RUSK testified in front of the Senate Foreign Relations Committee, those raids were Vietnamese raids. They are not followed in great detail.

Well here's the kind of thing that I carried around every two weeks. Kind of a high priced courier, actually, in the month of September, 1964, eight years ago, September is the month for anniversaries.

The initial by Mr. RUSK's undersecretary



and by GEORGE BUCKLEY after being initialed by

. They were scheduled for this maritime operation, one to thirty, September. Demolition of Group 1 bridge in North Vietnam by infiltrating scene accompanied by violence, port chains, placed short wave charges against stands in Kason (phonetic), placed anti-personnel mines on , this bridge previously hit but now repaired.

(cough)

observation posts 81 millimeter mortars and 40 millimeter guns, two patrol boats supplied by CIA. One to thirty September shall bombard in conjunction with capture mission. This is the cruel efficient job of the North Vietnamese close to water etc, etc, it goes on in several pages. This was the not very great detail which Secretary RUSK has suggested to the Senate Foreign Relations Committee. It might seem odd that that Fall that Secretary of State, his undersecretary and the Undersecretary of Defense were really spending a lot of time the placing of 81 millimeter mortar rounds and capturing North Vietnamese fishermen, that that was the only war we had at that time. And a few months later, they were busy taking bombing targets in North Vietnam so they stopped worrying about 34A mission.

To say this is to say that I knew in the Fall of 1964 that the Senate Foreign Relations Committee was being lied to by Secretary of State and by my boss, the Secretary of Defense.

I respected those things a great deal, that's why I was in that position. I figured they had their reasons, they must know what they were doing. I asked myself, who am I, do I have the right to really question how they intended to accomplish , because we don't hear this information.

I've worked for the President, I've worked for four Presidents, I have very little doubt it was their job to make these decisions. I really didn't question very much whether I had the right to help conceal the documents that revealed those lies. Even though they were being used to procure by fraud what amounted to a declaration of war for the Congress should be the only place to make that declaration of war. I say I don't really think to be honest in those days that I asked myself that question; do I have this right? Pretend I hadn't been to Vietnam; I didn't know the Vietnamese. They were pretty abstract to me, so I should weigh the Vietnamese line against abstract principles like not being defeated, not being humiliated etc. And by the



"some token, I didn't really have a context in which to fit that kind of information. I didn't know how long it had been going on. I did assume at that point, we got into this by good intentions. JOHNSON didn't get us into it, KENNEDY didn't get us into it, and so forth.

What I realized three years ago this month, after I finished reading the Pentagon Papers would be . It has always been an American War. There has never been a year in which there would be conflict in Vietnam approaching the scale of a war without American taxpayer's money, material, combat support, napalm, and eventually American combat troops required.

There would be political violence as there is in most parts of the world including this one, there could be more than here, there would be nothing like the war that has gone on in any one of those 25 years without that American involvement.

It's a war in which the complexities of Vietnamese politics are considerable as I was told. It's not a simple situation. It's not a situation if everyone supports wholeheartedly the Communist lead cause, I must say that I hadn't read much about the American Revolution as I have in the last year. I wasn't aware that JOHN ADAMS estimated this

war, our war 200 years ago, one third of the people were in support of the revolution, one third supported the British and one third were neutral. In some parts of the country, like New York half supported the British. At the end of the war the Tories were left. They went to Nova Scotia, , New England, the Caribbean; they scattered, some went to Canada. They left the behind, some were tarred and feathered, a few were mugged.

That's the way revolutions and wars of independence get ended. In the battle of Yorktown, there were more French soldiers and sailors on the side of the revolution, than there were Americans. And in the many years of our revolution, there were more American colonists fighting on the side of the redcoats, the British, than under General WASHINGTON. That's the nature of a revolutionary war of independence. That's what this is in Vietnam. It is a revolutionary struggle that is and it is primarily a war of independence. And we have resisted seeing what it is, or telling ourselves honestly what the history of that is, because we really don't want to admit that we are on the wrong side of the overthrow struggle.

I used to tell myself after I'd been in Vietnam, I know now that we were all lying when we said this is aggression from the North. It's a lot more complicated



than that. It's really a civil war, that's why I tried to <sup>tell</sup> control myself to keep sanity. I may kid other people but I know it's a civil war, but it's one more way of kidding ourselves, along with most of my colleagues.

A war in which one side is entirely payed, equipped, financed and combat supported by , it is not a civil war. No way. It is a question and always has been.

I've learned this from the Pentagon Papers, that what I'd seen in '64 was also true in '61, also true in '54, also true in '50. That the Presidents had always been told that what he was doing would not be adequate, would merely postpone defeat, and that meant it was a Presidential war. He had taken responsibility, he wasn't doing what he was told to do. He was doing what he invented. And if each of those Presidents and this was now '69

Each of those Presidents had by lying to the public, as to what , as to what we were doing covertly and overtly, as to where he intended to go.

I'd like to say this, I had been troubled quite a while why they were doing that, what it was all about, and I don't know for certain. The Pentagon Papers don't tell you why they did all this. They tell you

what they did. My best <sup>guess</sup> gesture is looking back at that earliest involvement when we get in directly in 1960, but that was very close to that HARRY TRUMAN was just then being charged with having lost in China. He was being charged that by RICHARD NIXON, then by Senator MC CARTHY. He was suffering heavily for it and

Even though the Communist leader had supported was 1961 that was the year before elections, neither was '52 the election year. No year since then has been a good year for an American President to decide Indochina is Communist, and that applied to RICHARD NIXON.

policy for 25 years, 20 years with acting direct assault had been to these Presidents felt what was necessary to do to prevent before the next election. If he wouldn't be in office when the finally inevitable victory of Communism in Vietnam came about, that would be his successor's problem to worry about.

Well that's the reason you can understand then. I'm not certain that that's the main reason or your reason, I think it is, that's my best conclusion



I think it's more serious than any economical motives that were involved, more than any so called strategic goals.

Another thing that you read in the Pentagon Papers, is that each President has told the dominos didn't fall. Once Cambodia fell, the other didn't. That's what he was told, it's not what he told us, but he

That's still true under President NIXON. That's what President NIXON was told in the Spring of 1969, and yet was not what he passed on to us or

I think the same motives still apply, that this President, the fifth one in a row does not intend to be the man who loses Indochina to Communism. He's found that he can avoid that, cheaper in circumstances, cheaper <sup>in</sup> ~~than~~ an American casualty, than his predecessor could. Frankly, I think if it took 500,000 men to <sup>hold</sup> ~~seize~~ Saigon, NIXON would realize he couldn't do it, and he would give it up. The American people wouldn't let him. I doesn't take that, now after he

It takes 20,000 men or so indefinitely and I will  
say those men are not coming home and they will have to be protected by bombing indefinitely. Not necessarily the

North Vietnam because,

South Vietnam.

I really have no knowledge, if this President and I will

they will be recognized as the focus of this talk isn't one, one human being who happens to be a President. That he is the man here now, who quotes himself being here another four years. I believe

(laughter)

must have been in 1968. If he is and I have no doubt that the enemies will bomb for another four years.

And if he is succeeded by Republicans or others, making four or eight years after that.

So in September '69, I suddenly discovered that the role that I tried to play in patriotic for twelve years, of serving the President and giving him the word, this didn't seem to be adequate to my responsibilities to the constitution, to this country or my concern for the Vietnamese by that time. The President was part of the problem. So I thought I'll give the information to the other, to another branch of the Government, Congress. Well Congress didn't do anything. They were



afraid of being cut off entirely. In the recent executive  
 , Senator FULBRIGHT asked for  
 time directly, Secretary HENDER (phonetic) recommended the  
 Pentagon Papers, my classified papers and was refused  
 summarily.

So after two invasions more of Cambodia,

for we conclude now about what happened. I'm asked a lot what I think of the effect of the Pentagon Papers. Well, maybe you didn't expect that a war that had gone on for 25 years, a war in which every major institution in our society had supported, had collaborated, in complicity to some degree or other the conscience, the courts, the press, the unions, the churches, everybody. I didn't think  
(change tapes)

the next four years, assuming that the polls keep telling us . What do those polls then tell us about the American people. In one sense they have the Pentagon Papers, they .

They really have a good deal of information as to what happened and what's being done. Does it mean then that they really don't care, that all this has been done with their consent after all. To say that is to say that the

American people

for the world, for Red China for ourselves. I'm not certain that that's the case and I think it's too early for me anyway to act as if I were certain. Because that would make it a very very <sup>long</sup> wrong war. I hope it's still true that habits of inertia of trusting the President, who frankly has not earned that trust by their performance in the last 25 years, have resulted in this kind of acceptance. I think it is true that there is still a good deal of ignorance about what we really are doing. Statistics that I gave you are real. I don't know whether you believe them

, but I suspect that you haven't heard them very much, if at all, and that's something of an excuse. The responsibility of the people lied to is not as great I would say as the responsibility of the people doing the lying. Or move from one side to the other on that, stop being one of those who's doing the concealing with the lie. It really is up to the other people as and whether they act on it.

I've heard a lot in the last month or two of that first hypothesis. The American people don't care. That's why even Democrats are voting for NIXON, and are not working



MC GOVERN. And even the Democrats who are voting for  
MC GOVERN are not spending or working or  
registering other people. They just don't care.

Well, I'm not sure that's the answer.  
That's something more we can speculate on in what we  
discuss. I think part of it is the kind of desperation,  
a kind of feeling of <sup>independence</sup> independence. That those who are  
not, but the 's not justified  
in the year 1972 because if there ever was a time when  
political activity by American citizens could end this  
war, this turns out to be it. In my opinion, I think  
it's far greater of a question for each on why I think that,  
but I do think that.

So I put it to you, the question that I had  
to face in '69, and I think all of you face right now.  
Let's stop talking about so much of the American people  
care about what we're doing in Vietnam and ask,  
how much do you care? How much each of us? How  
much do I care? Thank you. (applause)

I talked a little longer than I intended, but I  
wanted to take half an hour or so for questions. I didn't  
want to desire to concentrate  
-on politics if went to bring that subject

up, do it now or later. Tell you what we might do, what we have is around twenty minutes or half an hour for question if you want. Anybody wants to leave, do it right now. And then I'd be glad to say later if any smaller group of people wanted to talk, want to ask me about the elections, so you might want to postpone that sort of thing til later. OK?

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(Mount Clipping In Space Below)

# Ellsberg speaks on Vietnam

## 'Five Presidents

By Mike Harris  
R-J Staff Writer

Five consecutive U.S. presidents have lied to the American people about the Vietnam war, Daniel Ellsberg told a capacity audience Thursday night at the University of Nevada, Las Vegas student union.

Still under federal indictment for releasing the "Pentagon Papers," the slight, greying former Defense Department analyst urged listeners to break the string Nov. 7 by electing George McGovern.

Ellsberg said another four years of Richard Nixon would be another four years of bombing in Vietnam. *and... we*

"There's a good chance — say one in three or four — that Nixon will 're-establish the credibility of our deterrent' by exploding a nuclear bomb — oh, a small, clean air burst — before his four years are out," he said.

Ellsberg said Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon all fostered illusive "models" of history that were accepted by the press and public and hid their true war aims.

One of them is the "quagmire theory" which holds that the U.S. entered the conflict with good intentions, only to find that more and more effort was required in pursuit of an elusive victory, he said.

Ellsberg contended that since 1946 presidential advisers have told their bosses privately that French and American efforts in Indochina were futile because they were opposed by a majority of the Vietnamese people.

However, he said, each of the five presidents in turn has hid this fact from the public and prolonged the war in order "not to lose Indochina during his term in office."

Ellsberg said the fighting in Indochina — where 12 million people have been killed, wounded, or made refugees — has never gone on without a substantial contribution of American cash.

"It's always been an American war," he said.

Little more than a year after Japanese troops withdrew from Indochina, Ellsberg said, the French began funneling U.S. aid east in an attempt to reconquer the peninsula.

In late 1946 the French bombed and shelled Haiphong, killing 6,000 people — an incident

censored from the papers Ellsberg saw later as a young Defense Department employee.

They tried to re-establish their colonial regime by unseating the Vietminh government of Ho Chi Minh, which they themselves had recognized as legitimate in the North.

Four days after the fighting began, U.S. Undersecretary of State John Carter Vincent told his superiors that the French lacked the power to crush Ho's independence movement and that guerrilla warfare might continue "indefinitely."

Twenty-five years later, Ellsberg was to release that prediction — and other details of the conflict's hidden early history — to public scrutiny.

In 1950, when the French needed direct American aid, it was granted in part because of McCarthyist pressure. "It wasn't a good year to lose Indochina to the Communists," Ellsberg said. "Nor were any of the years to come."

Ellsberg said that American efforts after the fall of Dien Bien Phu in 1954 were aimed at preventing free elections. Ho would have won them hands down, he said, and we no longer could have claimed that the Communists had never gained power through the ballot.

"To keep the Geneva Accords from being honored, and Communists from being elected, we bought an army, a police force, prisons and a dictator," he said.

(Newspaper, city and state.)

have  
lied?

"Where were the good intentions in that?"

In this context, Hanoi's "invasion" of the South was a war of independence which only American doubletalk could transform into a "civil war," Ellsberg said.

"It's important how we talk about the war," he explained. "If it really is an invasion, then President Nixon is right, and to abandon our allies would be dishonorable.

"But this assumes that there really are two separate, sovereign countries, the North and the South, when all Vietnamese consider them one.

"After the Gulf of Tonkin incident in 1964, I told myself that the Defense Department might be kidding other people about an invasion, but I knew it was a civil war," Ellsberg said. "That was just a way of kidding myself.

"A war in which one side is completely paid, equipped and supplied by foreigners isn't a civil war. It's a war of aggression — our aggression."

Ellsberg first visited Vietnam in 1964, when Gen. Maxwell Taylor and Walt Rostow secretly concluded that things were going badly and that American ground combat troops were needed.

However, the Taylor-Rostow mission, and President Kennedy's subsequent announcements, gave press and public the idea that the war was of minor importance and that only advisers were necessary.

Ten years later, in a 1971 telecast, Taylor could still say that combat units had not been considered at that time, Ellsberg said.

He accused presidents, State and Defense Department officials and the military of assuming that they "have an unlimited license to lie to the American people."

Ellsberg said the casualties inflicted on the North Vietnamese during the Tet offensive of 1968 and the spring offensive of 1972 have allowed President Nixon to maintain Saigon in power with far fewer troops than his predecessor — although with more bombs.

Noting public numbness to the continued air war, he wondered aloud whether Americans really didn't care or were "desperate to the point of appearing apathetic."

He added, "The responsibility of the people who are lied to isn't as great as the responsibility of the people who lie. But 1972 isn't the time for apathy. It's the best chance we've had to do something through the political process."

Unfortunately, Ellsberg said, not many Americans have read the Pentagon Papers. Otherwise, more would be voting for George McGovern.

Thus far Nixon has presided over the dropping of four million tons of bombs, more than were dropped during the Johnson administration and twice as many as were dropped in all theaters during World War II, he said.

"Or you can say that 20,000 tons — a Hiroshima bomb — has fallen every week since the Pentagon Papers came out."



Daniel Ellsberg



FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

NOV 13 1972  
485

TELETYPE

NR012 WF CODE

650 PM URGENT 11-13-72 WWC

TO ACTING DIRECTOR

ATTN: DOMESTIC INTELLIGENCE

LOS ANGELES

FROM WASHINGTON FIELD

65-11613

ONE PAGE

Mr. Felt	_____
Mr. Baker	_____
Mr. Bishop	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Callard	_____
Mr. J. [unclear]	_____
Mr. [unclear]	_____
Mr. [unclear], ES.	_____
Mr. [unclear]	_____
Mr. [unclear]	_____
Mr. [unclear]	_____
Tele. Room	_____
Mr. Kinley	_____
Mr. Armstrong	_____
Ms. Herwig	_____
Mrs. Neenan	_____

MC LEX SIO

U.S. SUPREME COURT TODAY DENIED CERTIORARI ON  
ELLSBURG APPEAL FROM JUDGEMENT OF U.S. COURT OF APPEALS FOR  
THE NINTH CIRCUIT. JUSTICE DOUGLAS SUBMITTED FOUR PAGE  
DISSENT. JUSTICE BRENNAN WAS ONLY OTHER MEMBER JOINING  
DOUGLAS IN DISSENT TO COURT'S ACTION. WFO WILL FURNISH BUREAU  
COPY OF DOUGLAS DISSENT BY AIRTEL COVER.

END

REC-47

EX-117

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FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

NOV 13 1972  
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TELETYPE

Mr. Felt	_____
Mr. Baker	_____
Mr. Bishop	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Gebhardt	_____
Mr. Jenkins	_____
Mr. Marshall	_____
Mr. Miller, E.S.	_____
Mr. Purvis	_____
Mr. Soyars	_____
Mr. Walters	_____
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Mr. Armstrong	_____
Ms. Herwig	_____
Mrs. Neenan	_____

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5:36PM NITEL 11-13-72 JCD

TO ACTING DIRECTOR (65-74060) ATTN D I D

WASHINGTON FIELD (65-11613)

FROM LOS ANGELES (105-27952) 1P

MC LEK, SIO.

*Wagner*

ADMINISTRATIVE. ON NOVEMBER THIRTEEN INSTANT PROSECUTOR DAVID R. NISSEN ADVISED IN VIEW OF FAVORABLE RULING BY SUPREME COURT ON WIRE TAP ISSUE, HE ANTICIPATES JUDGE WILLIAM MATTHEW BYRNE WILL SET NOVEMBER TWENTY SEVEN NEXT AS DATE FOR RESUMPTION OF TRIAL. NISSEN ANTICIPATES DEFENSE WILL SEEK FURTHER DELAY IN HOPE OF MID DECEMBER OR EARLY JANUARY TRIAL DATE. HE ANTICIPATES DEFENSE WILL VIGOROUSLY CONTEST SEATING OF PREVIOUSLY SELECTED JURORS AND IF SUCCESSFUL WILL AGAIN CHALLENGE METHOD OF JURY SELECTION IN SOUTHERN DISTRICT OF CALIFORNIA, IN HOPE FOR HIGHER REPRESENTATION BY YOUTH AND MINORITY GROUPS.

*Arg*

AIR MAIL COPIES BOSTON, NEW YORK.

END

DSS FBI WA DC FOR TWO CLR

EX-117

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REC-47 65-74060-407



F B I

Date: 10/11/72

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

Via AIRTEL

AIR MAIL

(Priority)

TO: ACTING DIRECTOR, FBI (65-74060)

FROM: SAC, LOS ANGELES (105-27952) (P)

ATTN: DOMESTIC INTELLIGENCE  
DIVISIONSUBJECT: MC LEK  
SIO

Re Washington Field airtel dated 9/21/72.

Enclosed for the Bureau are five copies of an FD-302 which contains an interview with [REDACTED] Department, Rand Corporation. Two copies each are enclosed for Miami and Washington Field.

No FD-302 prepared on interview with RICHARD H. BEST since his information was based on hearsay.

On 10/4/72, RICHARD H. BEST, Chief Security Officer, Rand Corporation, Santa Monica, California, reviewed the enclosures to referenced Washington Field airtel and stated to the best of his knowledge, the papers in question had never been part of the Rand Corporation system. After scanning the material, it was his opinion that these papers represented a study in which DANIEL ELLSBERG took part sometime in 1968. This study came as a result of a meeting called by HENRY KISSINGER to plan strategies concerning United States involvement in Vietnam and ELLSBERG was invited to attend and contribute. To the best of his knowledge, BEST believed that all the work was done at the meeting, which he recalled was held in the Hotel Pierre in New York City and he believes that the work was done or sponsored by the Republican Party for the incoming President RICHARD NIXON.

ENCLOSURE

- ② - Bureau (RM) (Enc. 5)  
1 - Miami (RM) (Enc. 1)  
1 - WFO (RM) (Enc. 1) (65-11613)  
2 - Los Angeles

GSB/jlm

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97 NOV 20 1972

Special Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

SPECIAL INQUIRY SECTION  
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ba BEST recalled he first heard rumors of this meeting in mid-1971 and, at the time, felt some concern that such a meeting would take place in such a public atmosphere as a hotel in New York City rather than in a more secure area since it was rumored that the meeting concerned the drafting of "options" in Vietnam.

BEST was not aware how ELLSBERG came to be nominated to the meeting, did not know if anyone at Rand Corporation in Santa Monica was aware that he was going, but felt the travel documents in Rand's possession would show reimbursement for this travel if Rand was involved in his trip in any way.

BEST then went through the collection of data that he has accumulated during the course of this investigation and prepared Xerox copies of two papers which may have had some bearing on this phase of the investigation. He said that in July, 1972 two employees of Rand, Santa Monica, [REDACTED] and [REDACTED] read and reproduced all references to Rand Corporation from the book written by ELLSBERG entitled "Daniel Ellsberg: Papers on the War." The following quote comes from pages 19 and 20 of that book:

"Once I had concluded, in 1967, that we were not going to succeed in Vietnam, I worked actively toward ending our involvement. I did so as a private citizen, but all my background led me to work behind the scenes and almost exclusively with actual and prospective Executive officials and their staffs; these included a number of Presidential candidates and their advisers, and finally, at the end of 1968, the National Security Council staff of the new President-elect.

"Indeed, on Christmas Day, 1968, two colleagues from Rand and I flew to New York for discussions with Henry Kissinger, at the President-elect's office at the Hotel Pierre. Kissinger had requested in early December that Rand present the incoming President with a range of policy 'options' on Vietnam, and I had been in charge of defining these and coordinating the work.



"In January, a second version of the 'options' paper, edited by a Rand colleague, was the basis for the first discussion of Vietnam policy at the opening meeting of the National Security Council in the new Administration."

✓ The second article cited by BEST appeared in the "Early Bird Current News" issue of Wednesday, 8/23/72. The legend appearing at the bottom of this publication indicated it is prepared by the Air Force (SAFAA) as Executive agent for the Department of Defense to bring to the attention of any Defense Department personnel matters within their official responsibilities. It lists JAMES KILLINGBECK as Chief and HELEN YOUNG, Assistant Chief. The article in question appeared in the 8/23/72 issue of the "Washington Post" newspaper, page one. It was written by CHALMERS M. ROBERTS and entitled "Ellsberg Says Nixon Sent Frogmen to Warn Hanoi." The dateline is Miami Beach, 8/22/72. In the article, ROBERTS says DANIEL ELLSBERG, speaking in Miami Beach on 8/22/72, said that early in the Nixon Administration, NIXON sent Frogmen into Haiphong Harbor as a warning of possible escalation to come if North Vietnam did not agree to a settlement of the war. ELLSBERG said that two other steps which were taken to serve as signals to Hanoi were the sending of American Marines into combat in Laos and the initial B-52 bombing of communist forces in Cambodia. ELLSBERG was trying to show that Mr. NIXON, between the period of his election and inauguration, developed a plan for the conduct of the war and ELLSBERG released copies of what he said was a nonclassified study arranged for by HENRY KISSINGER to draft options which would be available to the new President.

"Ellsberg, then with the Rand Corp., said he had been asked by White House Adviser Henry Kissinger, soon after his appointment, to head a team drafting the options paper. He said he discussed the paper with Kissinger at a 1968 Christmas Day meeting in New York's Hotel Pierre.



LA 105-27952

"Out of this initial paper, said Ellsberg, came (1) a series of Kissinger questions that in turn produced the answers in what is known as National Security Action Memorandum Number one, which was disclosed earlier this year, and (2) a redrafted set of options presented to Mr. Nixon at his initial National Security Council meeting in January, 1969."

The above quotes appear identical in substance to the FD-302 submitted by Miami in their airtel, 9/1/72.

Concerning the two colleagues from Rand who apparently collaborated with ELLSBERG in 1968, BEST did not know who they were but said he would find out. He reiterated his strong conviction that the material in question was not a Rand project since, to the best of his knowledge, Rand was not involved in any "options" study in 1968 - 1969.

On 10/4/72, BEST telephonically advised that he had discussed the problem with [REDACTED] and [REDACTED] had furnished him with the names of the [REDACTED] individuals who had accompanied ELLSBERG in 1968. [REDACTED]

and MORTON HALPERIN, a current member of the Ellsberg-Russo Defense Team.

Based on [REDACTED] interview and statements that none of the information was classified and apparently ELLSBERG was legally in possession of the published papers, Los Angeles conducting no further investigation or interviews at Rand in this specific regard.



10- OFFICE OF ACTING DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE

MR. FELT  
MR. FAPER  
MR. FISHER  
MR. GALLAGHER  
MR. CLEVELAND  
MR. CONRAD  
MR. DALREY  
MR. GERHARDT  
MR. JENKINS  
MR. MARSHALL  
MR. MILLER, ESQ.  
MR. PURVIS  
MR. SOYARS  
MR. WALTERS  
TELE. ROOM  
MR. KINLEY  
MR. ARMSTRONG  
MS. HERAIG  
MRS. NEERAN

ENCLOSURE ATTACHED

ENCLOSURE

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20 NOV 14 1972

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16 DIME NOIR

Senator  
Patrick Henry  
Federal Bureau of Investigation  
Washington, D. C.

James



**EXT**  
U.S. JET  
PRIME-STAR  
NORTHWEST  
DALLAS  
EAST COAST  
WEST COAST  
OWN REGION  
2, 3, 4, 5, 6, 7, 8, 9, 10, 11  
OPEN AIR

Inquiries,  
Participation  
And  
Contributions  
Are Welcome.

[A complete, revised and up-dated version of this pamphlet will be published shortly. For individual copies, write to the Project and enclose a 50¢ contribution if possible.]

THE  
PENTAGON  
PAPERS  
TRIAL

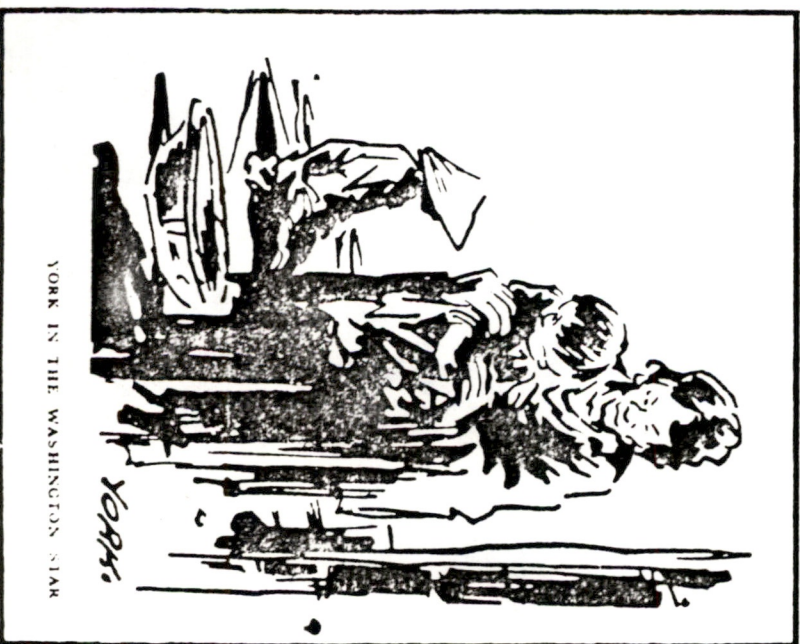
PENTAGON PAPERS PEACE PROJECT  
125 W. 4th Street, Suite 612  
Los Angeles, Calif. 90013  
(213) 489-4250

10/17/72



The Project is now developing:

- A digest of the Pentagon Papers.
- A film with Dan and Tony discussing the trial, the war and the Papers.
- A radio "magazine" service for national distribution.
- A guerrilla theater and mixed media troupe.
- An occasional PENTAGON PAPER with news about the war and the trial.
- Occasional pamphlets.



WORK IN THE WASHINGTON STAR

## THE PENTAGON PAPERS BELONG TO THE PEOPLE VIETNAM BELONGS TO THE VIETNAMESE

The trial of Daniel Ellsberg and Anthony Russo begins this week in Los Angeles. They are being tried for acts that led to the release of the secret, Defense Department study of the Vietnam war known as THE PENTAGON PAPERS. Ellsberg faces 115 years and Russo faces 35 years in prison.

Since no one has ever been prosecuted for doing what Dan Ellsberg and Tony Russo have done, and since no specific laws have been broken, it is clear that the Executive Branch of the United States government is using the trial to shore up its secrecy system and intimidate others who may also wish to liberate secret government information that the American people have a right to know.

THE PENTAGON PAPERS TRIAL will be one of the most important in American history. At stake are issues related directly to aggression abroad and repression at home.

In the trial, Dan Ellsberg and Tony Russo are defending their freedom against government prosecution, while the papers in evidence show that the Executive Branch has been prosecuting a war of aggression against Vietnamese self-determination and against the best interests of all Americans.

While Dan and Tony are defending the people's right to know about the government policies that so deeply affect our lives, the government is trying to use the trial to make new censorship law that would effectively suppress such information.

While Dan and Tony are defending the right of self-determination, especially for Americans, the government is viewing the American people as an alien power.



WHAT HAPPENED?

The story of the case began on June 13, 1971 when The New York Times printed the first of a series of articles and classified documents on the history of the war, now known as THE PENTAGON PAPERS. The Times was able to print three installments before further publication was halted by an unprecedented injunction obtained by the US Attorney General. For the first time in America's history, a newspaper was restrained in advance by the government from publishing specific articles.

After the Times was enjoined, the Washington Post, Boston Globe, Chicago Sun-Times, Los Angeles Times and other newspapers continued to publish portions of the Pentagon Papers as a test of First Amendment freedoms of the press. At a Committee hearing, Alaska's Senator, Mike Gravel, also read portions of the study into the public record, and a Gallup Poll showed that 58% of the American people who knew about the case supported the newspapers' right to publish.

On June 30th, the Supreme Court ruled 6 to 3 in favor of publication, with Justices Black and Douglas expressing the view that "prior restraint" on publication is prohibited by the First Amendment. Justice Black said: "The government's power to censor the press is abolished so that the press would remain forever free to censure the government.... Only a free and unrestrained press can effectively expose deception in government." In July, the President declassified most of the study and instructed the Government Printing Office to prepare a 12-volume edition for public sale.

However, still intent on a legal coup against the public's right to know, the Justice Department indicted Daniel Ellsberg for theft and espionage. On June 28th, Dan Ellsberg voluntarily surrendered to U.S. Marshalls in Boston and took public responsibility for his actions. He said: "I felt as an American citizen, a responsible citizen, I could no longer cooperate in concealing this

Attorney General, Robert Mardian, is reported to have said, the government is afraid of the growing number of people who feel they "should be ruled by a sense of conscience rather than administrative rules."

SELF-DETERMINATION

The trial, then, has very much to do with self-determination - and as in Vietnam, it is imperative that the government lose.

PENTAGON PAPERS PEACE PROJECT

The Pentagon Papers Peace Project has been organized to insure that the issues raised in the trial will be widely communicated and understood. This is especially important because by avoiding the "intent to injure" clause in the Espionage Act and by narrowing the issues to technical legal arguments, the government is making every effort to prevent the defendants and their lawyers from challenging the legality and morality of the war.

Presidential powers, the whole system of government classification--~~secret~~cy-lies, First Amendment freedoms, the public's right to know, Presidential deception of Congress and the people, and the outright manipulation of public opinion - all are issues raised by the Pentagon Papers and the trial, all are issues the government would prefer to avoid, and all are issues that must be brought before the people.

Since the Pentagon Papers give the American people the evidence needed to expose the lies and deceptions that still continue under Nixon, it is important that they be used as an organizing tool to end the war.

The Pentagon Papers Peace Project will produce and distribute educational materials on the war, the trial and the Papers, and help others organize around these issues.



of experience in the security classification field, also testified that "at least 99 1/2% of the total documents in the country bearing security classifications did not qualify for classification and protection in the defense interests of the nation."

The practice of classification in the Executive Branch has become so bizarrely routine that officials have been known to classify newspaper clippings, rubber band orders and obsolete technical information. The situation would be humorous if it were not so costly. "111" Florence estimates "that at least \$50 million a year is still spent on storing, protecting and inspecting unnecessarily classified defense information."

The second answer is what the trial is all about. If the Pentagon Papers is any indication of what is in the other 1,020,000 cubic feet of secret documents, then the American people are living under a government that has gotten entirely out of control of the people. As Dan Ellsberg has argued: "The secrecy system is the Achilles Heel of the Constitution." Government officials are not free to speak out truthfully and the American people are kept in the dark about their government's real policies.

# INTIMIDATION

is, the real purpose of the trial is to plug the temporary dikes that Dan Ellsberg and Tony Russo have bombed. Given the nature of the charges and the fact that no specific law has been broken, we can only conclude that the Executive is selectively prosecuting them in order to intimidate other conscience-stricken people in public and private bureaucracies.

Like all political trials and like the war on Vietnam, Dan and Tony are to be held up as examples of the fate that will befall others who speak truth to power. and demand self-determination. As former Assistant

information from the American people."

Six months later, and a few days before pre-trial hearings were scheduled to begin, a Los Angeles grand jury returned a new indictment charging Daniel Ellsberg and his former RAND colleague, Anthony Russo, with conspiracy, theft and espionage.

## WHAT ARE THE PENTAGON PAPERS?

The Pentagon Papers are a 47-volume Defense Department study of the Presidential decision-making processes that created and escalated our war on Vietnam. The study, entitled "History of U.S. Decision-Making Process on Viet Nam Policy," was commissioned in 1967 by the Secretary of Defense, Robert S. McNamara, and compiled by 36 experts over a year and a half period. Designed to be "encyclopedic and objective," the Papers comprise 3,000 pages of analysis and history of the war and Presidential policy-making between 1940 and 1968 with about 4,000 appended pages of official documents written by Presidents, Cabinet members, ambassadors, generals and other government officials.

The Pentagon classified the Papers Top Secret as a matter of routine practice and produced only 15 copies.

## WHAT SECRETS DO THE PAPERS REVEAL?

The Pentagon Papers are embarrassing to the government because they contain information that undercuts all public Presidential justifications for the war. The so-called "secrets" revealed by the Pentagon Papers have to do - not with weapons, codes, troop movements and other such military matters - but with Presidential policies of waging an aggressive war under the guise of protecting freedom and national security.

Beginning with our support for the French colonial



war against Vietnamese independence when, according to the Papers, we "adhered uniformly to a policy of looking to the French rather than to Vietnamese Nationalists for constructive steps toward Vietnamese independence," the United States has pursued a consistent policy of supporting anti-nationalist forces. In fact, for those Americans who still need to ask why "we have not won the war," the Pentagon Papers provide eloquent answers. The Papers show that throughout our involvement, American policy-makers have frequently lamented the vitality of nationalist forces and the venality of the government of south Vietnam.

For example, in July 1967, Robert McNamara wrote to President Johnson that the rural Vietnamese believed "that the GVN [government of south Vietnam] is really indifferent to the people's welfare; that the low-level GVN are tools of the local rich; and that the GVN is ridden with corruption." Daniel Ellsberg reports that when the Assistant Secretary of Defense, John McNaughton, was briefed on a study of Viet Cong motivation and morale in 1967, he replied: "If what you say in that briefing is true, we're fighting on the wrong side."

Although the Vietnamese had won their independence in 1945, they had to fight for it again when the French re-occupied their land. The Vietnamese decisively defeated the French in 1954, but the Geneva Accords that resulted the war forced the Vietnamese to accept a temporary division of their nation at the 17th parallel with the promise of reunification elections to be held in 1956. However, because the United States began scuttling the terms of the Accords even before the ink was dry, the Vietnamese are again fighting for their independence.

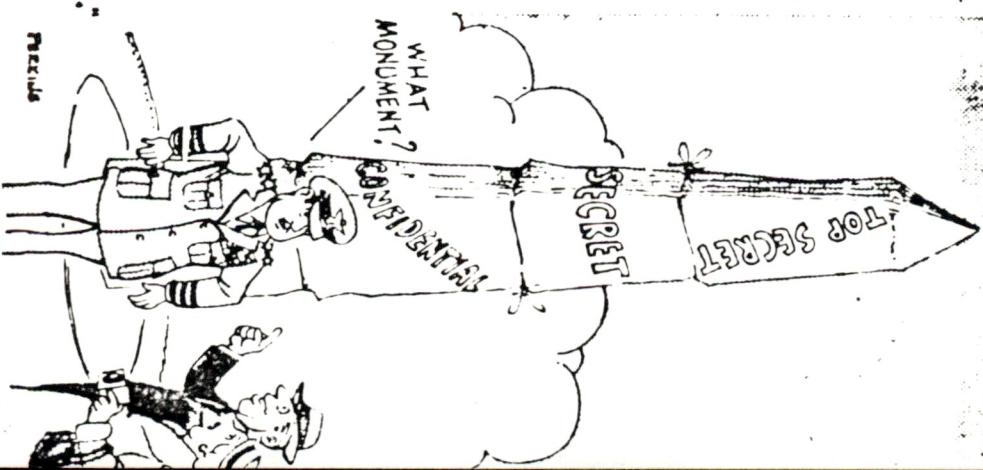
The Pentagon Papers show how, in 1954, the United States began undermining the Geneva Accords by sending a "cold war combat team" to conduct clandestine military and psychological warfare operations against north Vietnam and indigenous south Vietnamese nationalists.

The President claims that his power to issue Executive Orders establishing such things as a classification system is derived from the authority vested in him by the Constitution. Although Congress has held hearings on this matter, it has not acted seriously to question or curb the Executive's classification practices. In fact, Congress has often complained about its own inability to obtain secret information from the President. The Pentagon Papers are eloquent testimony to the President's ability to use the classification system as a weapon against Congress.

At the present time, the Pentagon has about 1,020,000 cubic feet of classified material. Rep. Ogden R. Reid estimated that this equals 18 piles of classified information as high as the 555-foot Washington Monument! What is the government hiding in all those stacks?

One answer is "nothing." Former Supreme Court Justice, Arthur J. Goldberg, testified before House

Hearings that "75 percent of these documents should never have been classified in the first place; another 15 percent quickly outlived the need for secrecy...." William G. Florence, a retired Air Force official with 43 years



By William Petrine—The Washington Post



later. In June, 1971 after the release of the Pentagon Papers, Mr. Russo was subpoenaed by the grand jury in Los Angeles, then jailed because he refused to testify unless his testimony could be made public. Judge

Ferguson ordered the prosecutor to provide Mr. Russo a transcript of his testimony and he was released after 47 days in prison; but the prosecutor, David Nissen, defied the Court order. Tony refused to testify unless the conditions of the order were met. Months later, he was indicted, and now faces a possible prison term as Daniel Ellsberg's co-liberator of the Pentagon Papers.

#### WHAT ARE THE ISSUES?

The issues in the Pentagon Papers Trial concern not only Americans, but people all over the world, especially the Third World where the United States is presently using "anti-communism" as a mask for its political and economic interests in suppressing self-determination. If Dan Ellsberg and Tony Russo are convicted, America will make a great leap forward into "1984" and our Presidents will be unfettered in their ability to prosecute aggression abroad and repression at home.

#### SECRECY

At Americans (including Congress) are surprised to learn that Congress has never passed a law giving the President the power to establish a classification system. The practice of classifying information with such markings as "Confidential", "Secret" or "Private" can be traced back to the war of 1812. The system was established by the military and given formal recognition in an Executive Order issued by President Roosevelt in 1940. Subsequent Executive Orders issued by Presidents Truman, Eisenhower and Nixon have further refined the classification system into its present state.

In north Vietnam the team conducted rumor campaigns to discredit the Viet Minh nationalists and encourage people to move south. Although Edward Lansdale, head of the team, reported that "Vietminh relations with the mass of the population during the fighting had been exemplary" as opposed to the Vietnamese National Army which was more "adept at covving a population into feeding them, providing them with girls," his team circulated rumors about alleged Viet Minh atrocities and even hired astrologers "to write predictions about coming disasters to certain Vietminh leaders and undertakings, and to predict unity in the south. The work was carried out under the direction of Lt Phillips, based on our concept of the use of astrology for psywar in Southeast Asia."

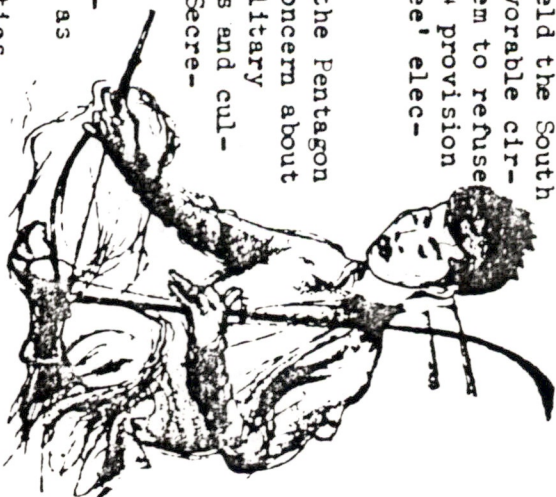
The team also helped to organize airlifts and other means of transporting people south and "spent the last days of Hanoi in contaminating the oil supply of the bus company for a gradual wreckage of engines in the buses, in taking the first actions for delayed sabotage of the railroad (which required teamwork with a CIA special technical team in Japan who performed their part brilliantly), and in writing detailed notes of potential targets for future paramilitary operations...."

In the south, the team helped to organize political and military support for Ngo Dinh Diem whom the United States wanted to install as south Vietnam's leader. The tragic irony of this situation is that nine years later the U.S. decided it could not win with Diem because, as the CIA reported, his regime was essentially authoritarian. Therefore, the U.S. assisted in the 1963 coup that resulted in Diem's assassination.

The fatal blow to the Geneva Accords came in 1956 when the U.S. backed Diem's refusal to hold the 1956 elections. In 1954, the CIA had reported that: "If the scheduled national elections are held in July 1956, and if the Viet Minh does not prejudice its political prospects, the Viet Minh will almost certainly win." Robert McNamara later concluded in a report to President Johnson that: "Only the



U.S. presence after 1954 held the South together under far more favorable circumstances, and enabled Diem to refuse to go through with the 1954 provision calling for nationwide 'free' elections in 1956."



A striking feature of the Pentagon Papers is the absence of concern about the effects of American military actions on Vietnamese lives and culture. In 1961 the Deputy Secretary of Defense Task Force reported that: "The area should be treated as a laboratory and proving ground as far as this is politically feasible." Civilian casualties are taken into account only when they appear to affect the course of the war, as in Roger Hilsman's 1961 report that "indiscriminate bombing in the countryside is forcing innocent or wavering peasants toward the Viet Cong."

#### WHAT LIES DO THE PAPERS REVEAL?

Pentagon Papers reveal that four successive Presidents have deliberately tried to:

- 1) deceive people by withholding important facts about the true nature of the war;
- 2) mislead people by saying one thing in public and doing another in secret; and
- 3) manipulate public opinion by staging military actions and selectively releasing "secret" information at politically expedient times.

For example, the Papers reveal that President Johnson had plans to escalate the war against north

truth about the war led him to seek publication of the Papers, first through official channels (including the Senate Foreign Relations Committee), then through the press.

Anthony Russo began his professional career as a research scientist at NASA's Langley Space Laboratory. He holds an M.S. degree in Aeronautical Engineering from Princeton University, and a Master of Public Affairs degree from the Woodrow Wilson School of Public and International Affairs, where he assisted Prof. Oskar Morgenstern in the Econometrics Research Program and studied foreign policy under Profs. Richard Falk, George Kennan, Klaus Knorr and Edmundo Flores.

Mr. Russo joined the RAND Corporation in June, 1964. Between February, 1965 and January, 1968 he spent a total of 24 months in Vietnam. In connection with the Viet Cong Motivation and Morale Project--the most important phase of RAND's multi-million dollar Vietnam research program--he interviewed prisoners held by the U.S. and Saigon governments in jails throughout south Vietnam. This intimate contact with the opposition led him to respect their integrity and dedication, and to conclude that they were not, in fact, the enemies of the American people.

While in Vietnam, Mr. Russo also conducted a statistical analysis of the crop destruction program, revealing that 100 pounds of rice were denied to civilians for every pound denied to the National Liberation Front. In a study of the relationship between socioeconomic factors and the degree of Viet Cong influence, he demonstrated that the MLF found their strongest support among the masses of poorer people. Other RAND analysts had claimed that the MLF drew principal support from self-seeking, relatively well-off people.

Tony and Dan met in Vietnam in 1965. They became close friends during their work at RAND several years



Finally, even the statements and acts of the co-conspirators (including Dan and Tony) made in furtherance of the alleged conspiracy are admissible against Ellsberg and Russo.

WHO'S ON TRIAL?

Daniel Ellsberg is a former Marine Corps officer who holds a Harvard Ph.D. in Economics. Dr. Ellsberg was a strategic analyst at the RAND Corporation and a consultant to the Defense Department from 1959 to 1964.

During the following two years, he served as Special Assistant to the Assistant Secretary of Defense for International Security Affairs. He spent 1965-67 in Vietnam, first as a State Department volunteer on General Lansdale's senior liaison team (Lansdale is the U.S.'s top counter-insurgency expert), then as Special Assistant to Deputy Ambassador William Porter.

In the fall of 1967, Ellsberg returned to RAND, where he began research and writing for his portion of the Pentagon Papers, and continued to serve as a consultant to the government on high-level policy matters. In late 1968 he coordinated RAND's development of a range of policy "options" on Vietnam, requested by Henry Kissinger for President-elect Nixon. Early the following year, he prepared "National Security Study Memorandum No. 1", a set of questions Kissinger sent to all agencies dealing with Vietnam, and he helped to summarize the answers to those questions for Nixon.

Of the 36 authors of the Pentagon Papers, Dan Ellsberg was the only one authorized to read the entire finished study. In September 1971, when he completed that reading--and found his views on the war transformed--the only other person who had read the Pentagon Papers in their entirety was the study's director, Leslie Gelb. Ellsberg's strong conviction that the American people should know the

Vietnam, but delayed them until after the 1964 elections because he wanted to present "himself as the candidate of reason and restraint as opposed to the quixotic Barry Goldwater." Again, in the Fall of 1966, the Papers show that President Johnson deferred "major decisions on the war until after the elections. Several 'peace' candidates were aggressively challenging Administration supporters in the off-year Congressional contests and the President wished to do nothing that might boost their chances. As it turned out, they were overwhelmingly defeated in the November balloting."

The Pentagon Papers are an expert's guide to the art of deception. While President Johnson announced in his 1965 State of the Union Address that: "We are [in Vietnam] first, because a friendly nation has asked us for help against the Communist aggression," John McNaughton, Assistant Secretary of Defense, wrote:

U.S. aims:

70%--To avoid a humiliating U.S. defeat (to our reputation as a guarantor).

20%--To keep SVN (and the adjacent) territory from Chinese hands.

10%--To permit the people of SVN to enjoy a better, freer way of life.

ALSO--To emerge from crisis without unacceptable taint from methods used.

NOT--To "help a friend," although it would be hard to stay in if asked out.

While our Presidents were justifying escalations on the basis of alleged north Vietnamese actions, the Joint Chiefs of Staff were preparing and

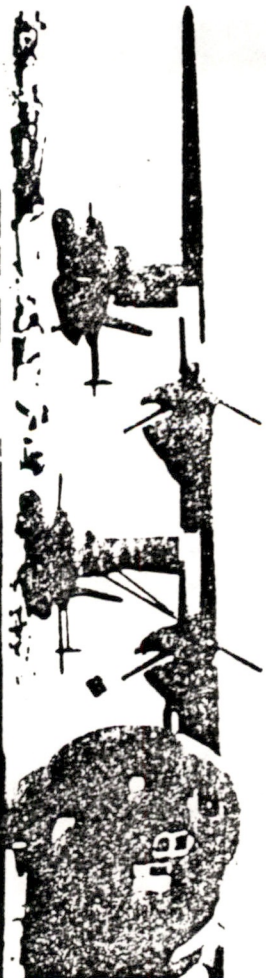




carrying out "provocation plans" designed to lead north Vietnam into incidents that would justify American military escalations.

While our Presidents have also justified the war on the basis of the "domino theory" (that if south Vietnam "fell to the communists, all of Southeast Asia would fall"), the CIA was reporting contrary information and even as early as 1954 the Joint Chiefs of Staff reported that: "Indochina is devoid of decisive military objectives and allocation of more than token U.S. armed forces in Indochina would be a serious diversion of limited U.S. capabilities."

Finally, the Papers show that these deceptions often became self-deceptions with policy-makers leaving basic



assumptions unquestioned; grabbing at straws for signs of an impossible victory; and acting on information that they would believe rather than true, accurate information.

Outright lying is also revealed by the Papers. For example, in 1963 Ambassador Lodge cabled to Washington: "We are launched on a course from which there is no respectable turning back; the overthrow of the Diem government. There is no turning back in part because U.S. prestige is already publicly committed to this end in large measure and will become more so as facts leak out." When Diem was overthrown, American officials denied our participation. In 1964, Lodge told The New York Times: "The United States was not involved in the overthrow of the Diem regime."

## CONSPIRACY

Since there is no specific law defining Ellsberg's and Russo's actions as criminal, the government hopes to get at them indirectly by trying to prove larceny, espionage and conspiracy. Conspiracy is a broad, elusive catch-all charge that governments often use when they have no other substantial legal legs to stand on.

The conspiracy doctrine originated in Medieval England during the reign of Edward I. It was used to prosecute people who brought false and malicious charges against innocent people. However, in 1611 the infamous Court of the Star Chamber reinterpreted the doctrine to say that the crime of conspiracy involves an agreement, not in committing a crime, but in planning a crime.

"Thus," as Jessica Mitford wrote in THE TRIAL OF DR. SPOCK, "conspiracy law relieves the prosecutor of the necessity of proving any actual wrongdoing by the defendant....Because of this extraordinary feature, conspiracy has long been favored by prosecutors as a means to convict union organizers, radicals, political dissenters, opponents of governmental policies, and other troublesome individuals who could not otherwise be put behind bars."

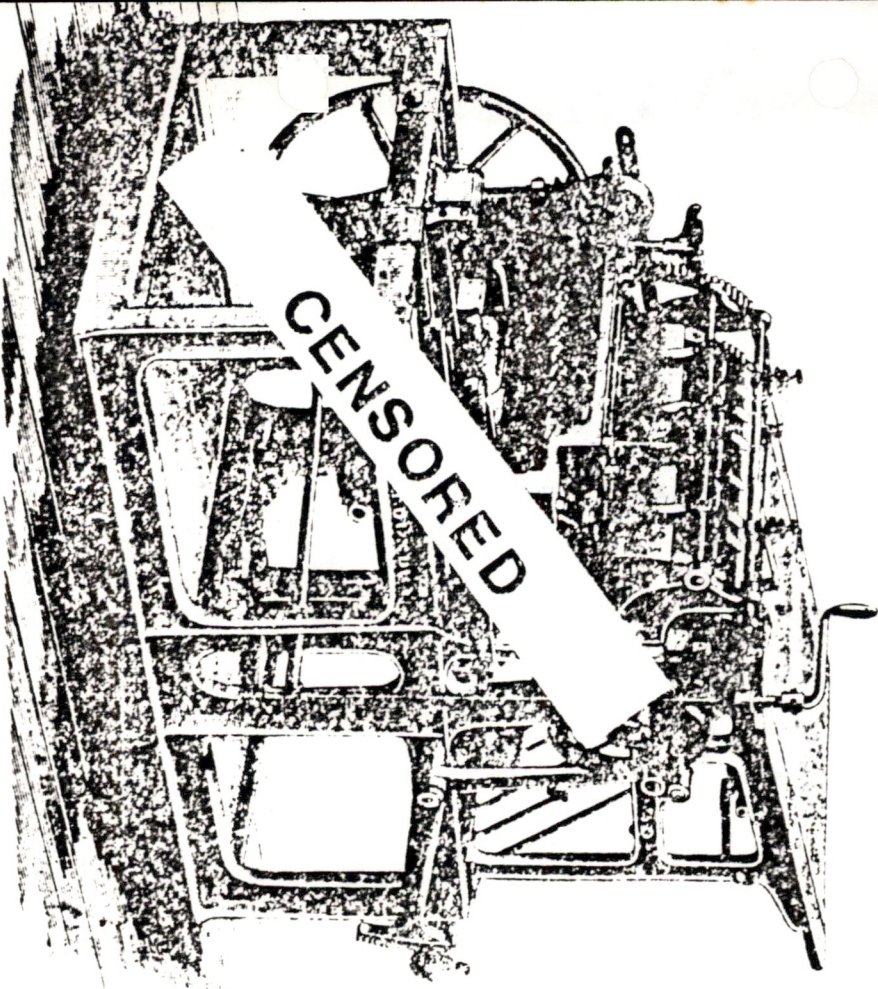
The conspiracy doctrine also allows the government to charge people with conspiracy without necessarily indicting them. In this case, the grand jury also charged Van Van Thal and Linda Sinyay with conspiracy, but since they fall into the category of "unindicted co-conspirators," they will never have their day in court.

In conspiracy trials the customary rules of evidence are changed, and nebulous, hearsay evidence is often admitted where it would be excluded in ordinary criminal cases. The conspiracy "agreement" can be inferred from such circumstantial evidence as the act of Xeroxing. Furthermore, only one overt act, however innocent or innocuous it might be, need be proved in the courtroom.



Therefore, if Ellsberg and Russo are convicted, the Executive Branch will have succeeded in using the Judicial Branch to produce a new, repressive information control law which the Legislative Branch has repeatedly refused to enact!

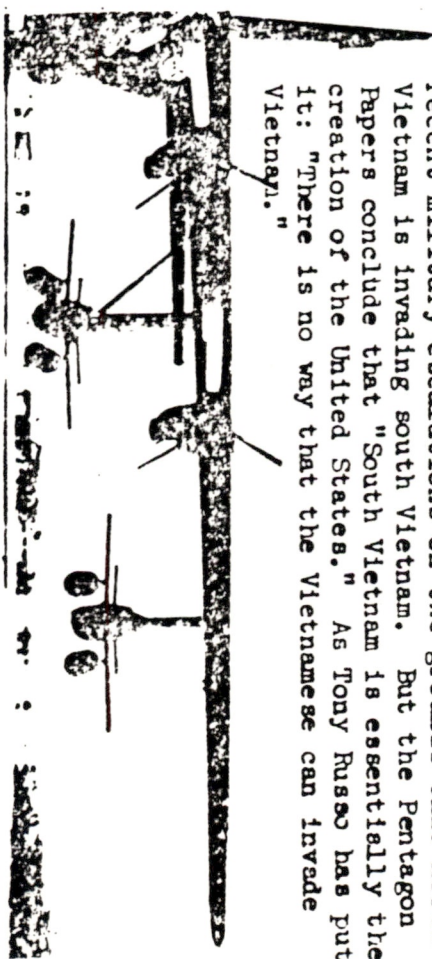
With such a precedent there would be no limit to government secrecy and anyone who published or read such information would be liable for prosecution.



# WHAT DO THE PAPERS SAY ABOUT NIXON?

Although the Pentagon Papers' history of the war ends in 1968, it is not dead history. By undercutting Presidential justifications of the war, by revealing lies and deceptions, by showing that America is the aggressor in Vietnam, the Pentagon Papers demythologize all the excuses that President Nixon has presented for continuing the war.

For example, President Nixon has justified his recent military escalations on the grounds that north Vietnam is invading south Vietnam. But the Pentagon Papers conclude that "South Vietnam is essentially the creation of the United States." As Tony Russo has put it: "There is no way that the Vietnamese can invade Vietnam."



Nixon's justifications for continuing the war are all the more deceitful because, as Vice President under Eisenhower, he was privy to all the Executive decisions and deceptions used to begin and justify American aggression against Indochina. He knows full well that he has not inherited a bad war from his Democratic predecessors. He has merely returned to the White House to pick up again the war that he helped to begin in the 1950's.

President Nixon's basic orientation toward Vietnam has not changed much from his hard-line position of the 50's and early 60's. In 1954, he said that "the Vietnamese lack the ability to conduct a war by themselves or govern themselves." Although he now claims to be



following a policy of "Vietnamization" of the war, his extraordinary reliance on bombing and electronic warfare indicates that he still does not believe in Vietnamization. Although Nixon is not using nuclear weapons in Indochina as he had proposed in the '50's, he is dropping the equivalent of 2 1/2 Hiroshimas every week.

President Nixon's justifications for mining the harbors and indiscriminately bombing north Vietnam are all the more insidious because The Pentagon Papers say repeatedly that, short of annihilation, bombing is ineffective. Like the strategic bombing survey after World War II, studies of the bombing of Indochina have concluded that such bombing kills many civilians, but will not end the war.

Furthermore, the Pentagon Papers were recently updated by the release of the secret National Security Study Memorandum No. 1. NSSM-1 was prepared for Nixon when he entered the White House and represented the opinions of all government agencies concerned with Vietnam in 1969. In brief, NSSM-1 told Nixon that the "domino theory" was bunk, that the Executive bureaucracy was deeply divided over bombing policies, that any such hopes for Vietnamization were unfounded, and that no agency was willing to predict a US victory in the near future. The "pessimists" said that it would probably take 13.4 years for pacification to succeed; the "optimists" said it would only take 8.3 years!

President Nixon's handling of the war indicates that he is continuing the fundamental policies of aggression and deception exposed by the Pentagon Papers.

Nixon's major public deception is the claim to be ending the war by withdrawing ground troops while dropping more bombs on Vietnam than have ever been dropped on a country in the history of the world. His major self-deception is the idea that he can end the war short of annihilating the people of Indochina.

1) they merely followed the existing customs regarding the handling of information, in which case they committed no crime, or  
2) the law is being used selectively to prosecute them for politically embarrassing breaches of the classification rules. In that case, it is discriminatory and void under the Constitution.

#### THEFT

In the indictment, the Government is also interpreting the theft and receiving statute in an awkward and novel way. The theft statute has always been applied when the Government suffered permanent or substantial loss of tangible property. In the case of the Pentagon Papers, no theft of physical property ever occurred. The government still has the Papers. Dan Ellsberg and Tony Russo just made sure that the rest of us could read them too!

When it was discovered that there was a question about who really "owned" the physical documents that Ellsberg and Russo used, the government reinterpreted the indictment as saying that the defendants stole the arrangement of the words on the Papers and the ideas conveyed by that arrangement!

By using the theft statute in such a blunderbuss way the Executive Branch is trying to stretch it to become the kind of information control law which Congress has repeatedly rejected. The First Amendment says that in situations where government interests, such as the control of information, are to take precedence over First Amendment interests, such as the public's right to know, Congress must specifically weigh the competing interests and enact special legislation addressing the problem. The courts cannot interpret new meaning into laws which would so substantially affect First Amendment freedoms.



Of course, the particular information contained in the Pentagon Papers is embarrassing to officials in past and present Administrations, but there is no law against releasing politically embarrassing information, and it certainly is not espionage. In fact, the release of embarrassing political information is the normal stock-in-trade of most politicians.

Since there is no classification law under which Ellsberg and Russo can be prosecuted, the government is reaching into the Espionage statute and trying to use it a 1 way.

According to the Espionage Act, the disclosure of classified defense information is a crime only when that disclosure is made "with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation." Yet the indictment against Ellsberg and Russo, the government has carefully excluded any charges about their intent. They are not charged, for example, with copying classified documents. There is a section in the Espionage Act making it a crime to copy defense documents, but it explicitly requires a subversive intent which Ellsberg and Russo obviously did not have.

Even though the law has never been used this way, the government has given no reasons for avoiding the "intent" clause, except to say that the section under which Ellsberg and Russo are being tried does not require proof of intent. The real effect of avoiding "intent" is that the government will try to convict the defendants without allowing the jury to consider that they intended to help the American people by revealing the truth about the war.

The defense will argue that the regulations covering the classification of documents must be read in light of actual practice. If this is done, Ellsberg and Russo must be acquitted for one of two reasons: either

# ARE THE AMERICAN PEOPLE AN ALIEN POWER?



As citizens we are told that the purpose of secrecy in government is to keep vital defense information out of enemy hands. But the Pentagon Papers show that our Presidents have been fighting three enemies: 1) the Vietnamese, 2) Congress and 3) us! Therefore, since WE are the real ENEMY of the Executive's war, Dan and Tony are being charged with espionage for giving us the truth.

Ironically, the Pentagon Papers reveal that the power of the American people is still potent.

The Papers contain many reports of Presidential attempts to mold and manipulate public opinion out of fear that if the American people knew the truth about the war, they would act to end it. As the Assistant Sec. of Defense wrote in May of 1967: "I see this war as a race between, on the one hand, the development of a viable South Vietnam and on the other, a gradual loss in public support, or even tolerance, for the war." This is why five Administrations have made such strenuous efforts to keep the American people in the dark.

This is also why it is so vitally important that Dan Ellsberg and Tony Russo be acquitted. In the Pentagon Papers Trial the Executive Branch of the United States government is viewing the American people as an ALIEN POWER.

Therefore, a conviction would permanently establish the government as an enemy of the people.

ALL PAPERS TO THE PEOPLE!



#### WHAT ARE THE CHARGES?

Daniel Ellsberg and Anthony Russo are charged in a fifteen count indictment. The 12 counts against Ellsberg include three basic offenses:

- 1) Conspiracy to defraud the government of "its lawful function of controlling the dissemination of classified documents;" conspiracy to commit theft; and conspiracy to commit espionage.
- 2) Stealing specific volumes of the Pentagon Papers and converting them to his own use, and retaining them without turning them over to an official entitled to receive them.
- 3) Violating espionage laws by communicating documents to persons not authorized to see them.

In 4 counts, Russo is charged with:

- 1) Conspiracy with Ellsberg and others.
- 2) Receiving stolen volumes of the Pentagon Papers with intent to convert them to his own use.

Violating the espionage laws by receiving classified documents without authorization and retaining those documents rather than delivering them to an official entitled to receive them.

Dan Ellsberg and Tony Russo are not charged with giving the Pentagon Papers to the newspapers, nor are they charged with making money from their publication. They have received no income for releasing the Papers. The acts with which they are charged allegedly occurred between March, 1969 and September, 1970. That period ends nine months before the Pentagon Papers became public.

#### ESPIONAGE

Ellsberg and Russo are not charged with giving away secrets about military weaponry or current strategy, nor are they charged with violating any law making it a crime to release classified information. Unlike Britain, America has no broad Official Secrets Act. Congress has always refused to give the Executive Branch the power to make it a crime to release a document simply by stamping it Top Secret.

Because the classification system was established by Executive Order, not Congressional legislation, the usual remedy for breaches is administrative reprimand. A Federal employee who discloses classified information may lose his or her security clearance or job, but cannot be sent to prison for that offense alone. In only two narrow instances do we have official secrecy measures covering a) information about codes and b) information given to a foreign agent by a government employee. Neither applies to the Ellsberg-Russo case.

The prosecution of Ellsberg and Russo is unique because the release of classified information to the public has never been considered espionage. In fact, classified information is regularly "leaked" to the press for purposes of Congressional and public opinion manipulation. Departments of the Executive Branch often release classified information in order to build Congressional or public support for their points of view as opposed to those of other Executive departments. Former officials, like President Johnson, take classified documents with them when they leave office and frequently use them in articles and memoirs giving their own versions of events. Classified information is also made available to selected university libraries. All of these widespread practices are, theoretically, violations of classification regulations. Yet, no one has ever been criminally prosecuted.



F B I

Date: 11/8/72

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)Via AIRTEL \_\_\_\_\_  
(Priority)TO: ACTING DIRECTOR, FBI (65-74060)  
(Att: DID)

FROM: SAC, NEW YORK (65-25641)

SUBJECT: MC LEK - SIO

Enclosed herewith for the information of the Bureau, Los Angeles and Boston are single copies of the publication "Win", dated 11/1/72, published with the support of the War Resisters League.

It is noted the entire issue deals with the Pentagon Papers and contains what are purported to be new interviews with PAT and DAN ELLSBERG.

*Ang*

ENCLOSURE ATTACHED

2-Bureau (Enc.1) (RM)  
1-Boston (65-5236) (Enc.1) (RM)  
1-Los Angeles (105-27952) (Enc.1) (RM)  
1-New York

REC-42

TJD:EG  
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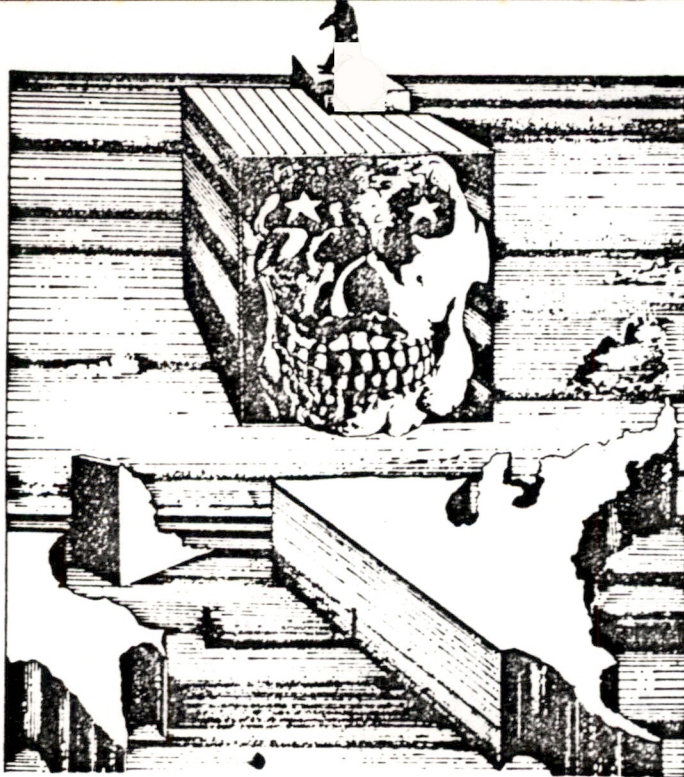
EX-112

NOV 14 1972

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Approved: 7/11/  
Special Agent in Charge

Sent \_\_\_\_\_ M SPer \_\_\_\_\_



Paul Spina/LNS

# WHAT'S ON TRIAL: ARE THE AMERICAN PEOPLE AN ALIEN POWER?

## Part I: The Charges

At first Dan Ellsberg was the only person charged in the Pentagon Papers case. That indictment issued on Friday night, June 25, 1971, charged fewer crimes and carried lower penalties than the present indictment. When he surrendered in Boston on June 28th, he said: "I did this clearly at my own jeopardy and I am prepared to answer to all the consequences of these decisions. That includes the personal consequences to me and my family. . . . Wouldn't you go to jail to help end this war?"

Apparently, however, after considering the risks of not harshly punishing the people involved in this leak and after failing to obtain secret grand jury testimony from Tony Russo, the government decided not only to indict both of them, but also to escalate the charges and penalties. The present indictment was issued in secret on December 29, 1971. Late that evening the Attorney General's office called a dozen Washington reporters to a press conference where they were locked in the room for five hours and given the contents of the indictment and a press release. The story was not to be released until the Attorney General's office was informed of Russo's arrest by Justice Department officials in Los Angeles.

Tony reports that "over 16 FBI agents came to try to arrest me, threatening my friends for 'harboring a fugitive,' although the indictment was still secret. Instead of calling my attorney to inform him of the indictment so I could surrender, they declared me a 'fugitive' and started hunting me. My lawyer heard a rumor about it, checked it out, and arranged for my surrender. I barely escaped being dragged in like a criminal. . . ."

Ellsberg and Russo are charged in a 15-count indictment. The 12 counts against Ellsberg include three basic charges:

- 1) Conspiracy to defraud the government of "its lawful function of controlling the dissemination of classified documents;" conspiracy to commit theft; and conspiracy to commit espionage;
  - 2) Stealing specific volumes of the Pentagon Papers and converting them to his own use, and retaining them without turning them over to an official entitled to receive them; and
  - 3) Violating espionage laws by communicating documents to persons not authorized to see them.
- In 4 counts, Russo is charged with:
- 1) The same count of conspiracy with Ellsberg and



other unindicted co-conspirators;

2) Receiving and retaining stolen volumes of the Pentagon Papers with intent to convert them to his own use and the use of others; and

3) Violating espionage laws by receiving classified documents without authorization and retaining those documents without delivering them to a government official entitled to receive them.

It is important to note that they are *not* charged with giving the Pentagon Papers to the newspapers or with making money from their publication. They have received no income for releasing the Papers. The acts with which they are charged allegedly occurred between March, 1969, and September, 1970. That period ends nine months before the Papers became public. Conspiracy

Conspiracy is a charge all too familiar to WIN readers, so we need not dwell on its pernicious aspects here. It will suffice to say that, as a fall-back for the government, it greatly increases the probability of a conviction. If the jury cannot be convinced that Ellsberg and Russo committed espionage and theft, they might be convinced that at least they agreed to do it even if they did not actually do it.

However, the real perfidy here is the nature of the crime charged. Although many people have been charged with conspiracy to defraud the government of a lawful governmental function, this is the first case of persons charged with conspiracy to defraud the government of a function which is not clearly "lawful." Congress has never given the President statutory authority to establish the classification system. The system of classification used in the Executive Branch was set up by Executive Order for internal housekeeping. People in the Executive Branch who compromise that system have always been subject to administrative reprimand, not criminal prosecution. Ellsberg and Russo are the first.

Ordinarily, every lawful governmental function is defined by an act of Congress. In the past, criminal charges of conspiracy to defraud the government's lawful functions have had their sources in Congressional statutes, such as cases involving conspiracies to defraud the Federal Housing Administration or Federal Reserve Banks. In the charge against Ellsberg and Russo there is no statute.

Instead, the government argues that the Executive Branch has certain implied powers that can be exercised without specific statutory authority. However, although the issuance of Executive Orders is a common and accepted implied power of the President, it has never been understood that they have the same standing as Congressional statutes. According to the Constitution only Congress, subject to review by the courts, can make laws defining what is criminal.

The government also contends that Congress has enacted certain laws that implicitly recognize the President's classification system. One of these is the Freedom of Information Act that became effective on July 4, 1967. This act was designed to give Congress and the people greater access to the government's information. Because the Act recognizes that Executive Orders can be issued to keep information secret in the interest of national defense, the government argues in this case that Congress has implicitly given the President statutory authority to control the dissemination of classified information.

"That is a technical truth," notes Leonard Wein-glass, Russo's chief attorney, "but it's a far different

peg to say there is a lawful function which every citizen's representative in Congress has approved of and passed upon that you are bound by. You know, for example, that ignorance is no defense to a violation of law. That is true because your representative in Congress participated in the making of that law. It's kind of a link in the democratic chain. But then the argument is: What about when your representative did not participate, like in this case? So, the implied powers argument falls when you look at the basis upon which people in this country can be criminally charged."

But, the judge agreed with the government and cited the Act as one basis for his denial of a defense motion to dismiss this first conspiracy charge. Ironically, then, the Justice Department is indirectly using the Freedom of Information Act to prosecute Russo and Ellsberg for freeing information for the American people. If the government obtains a conviction on this charge, it will have succeeded in securing statutory status for the President's classification system—and, by implication, all other Executive Orders!

#### Espionage

Ellsberg and Russo are not charged with giving away secrets about military weaponry or current strategy, nor are they charged with violating any law that makes it a crime to release classified information. Unlike Britain, America has no broad Official Secrets Act. Congress has always refused to give the President the power to make it a crime to release a document simply by stamping it "top secret." A Federal employee who discloses classified information may lose his or her security clearance or job, but cannot be sent to prison for that offense alone. In only three narrow instances does America have official, Congressional secrecy measures. These cover information about codes, certain atomic energy data, and information given to a foreign agent by a government employee. None of these apply to the Pentagon Papers case.

The prosecution of Russo and Ellsberg for espionage is unique because the release of classified information to the American people has never been regarded as "spying." In fact, classified information is regularly "leaked" by government officials, authorized and unauthorized, often for purposes of Congressional and public opinion manipulation. This "leaking" river of secret information also floods on a regular schedule. Everytime Congress prepares to vote on military appropriations—missile gaps, submarine gaps, jeep gaps and garbage gaps suddenly materialize from the secret files of the Defense Department. Departments within the Pentagon leak each other's material and their own in order to justify higher appropriations.

For example, during a period of inter-service rivalry over weapons systems, Army colonels released to *The New York Times* an Air Force staff paper deprecating the military effectiveness of Forrestal class carriers. The Army's purpose was to convince the Navy that the Air Force was leaking papers prejudicial to its interests! In the Spring of 1970, military and civilian officials launched a series of leaks and counter-leaks designed to influence President Nixon's decision on troop withdrawal rates from Vietnam. In an affidavit on behalf of the defense, John K. Galbraith reported that he frequently leaked classified information when he was Ambassador to India because "I found it easier to bring my views to bear on the President. . . by way of the *Washington Post* and its New Delhi correspondent than by way of the State Department. The



thought that I might be prosecuted or held in criminal jeopardy for such commonplace activity never crossed my mind." But the prize goes to LBJ who received a million dollars for his memoirs, *Vantage Point*, which includes portions of the Pentagon Papers.

All of these widespread practices are, theoretically, violations of Presidential classification regulations. Yet, no one has ever been criminally prosecuted. In a letter Congressman William S. Moorhead on February 22, 1972, the Deputy Assistant Secretary of Defense, D.O. Cooke, said that 1,193 formal and 991 informal investigations of incidents involving classification breaches had been conducted just in the Washington area between January 1, 1969, and June 30, 1971. Of these investigations, 1,996 concerned "improper physical protection of information." Although 2,372 administrative penalties were handed out for these classification violations, no criminal charges were filed or even recommended.

Hence, because there is no classification law under which Ellsberg and Russo can be specifically prosecuted, the government is reaching into the Espionage Act and trying to use it in a new way.

According to the 65-year history of U.S. espionage law, the disclosure of national defense information is a crime *only* when that disclosure is made "with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation. . . ." Yet, in this case, for the first time in the history of espionage prosecutions, the government has cleverly excluded "intent." Although the government admits that the law has never been used this way, it has given no reasons for excluding intent, except to say that the subsections of the law under which Ellsberg and Russo are being tried do not require proof of intent.

This leaves the government in the ludicrous position of *not* charging them for doing what they did, that is, copying national defense documents. Subsection (b) of the Espionage Act states that it is a crime to copy such documents, but the government did not invoke it because it also specifically requires proof of intent.

The exclusion of intent is very important to the government because it means that most of the salient and embarrassing political issues raised by this case are now excluded from courtroom discussions. As David R. Nissen, the government's prosecution attorney, has repeatedly insisted: "The war is not an issue in this trial." The effect of this strategy is to prevent the defendants from telling the jury why they released the Pentagon Papers. In defending their intentions Russo and Ellsberg would have been required to discuss the full history of the war as revealed in the Papers, their own experiences in government, and why they feel that the war is illegal, unconstitutional and immoral. As part of this defense they would have called on top government officials and scholars to confirm these points in public testimony before the jury and the world press. More importantly, perhaps, is that Ellsberg would have discussed NSSM-1 and his relations with the Nixon Administration. Also, in choosing the volumes on which to base its charges, the government has excluded the volume on the air war and several other areas that it does not want raised in court.

Politically, a conviction on these espionage charges would be disastrous for the public's right to know. By excluding intent and charging the defendants with communicating documents "to persons not entitled to receive them," *the government is placing the Amer-*

*ican people in the category as an alien power.* This should come as no surprise because one of the "secrets" revealed by the Pentagon Papers is that the Executive Branch has been fighting at least three enemies: the Vietnamese, Congress and the American people. The espionage charge is, in those terms, logical. A conviction will amount to an expansion of the Espionage Act into a punitive instrument that the government will be able to use at its discretion against citizens who release "secret" information to fellow citizens.

All of this puts the Pentagon Papers jury in a peculiar position. If they convict Ellsberg and Russo for espionage, they will convict themselves of being an alien power. If they also convict Russo of theft for receiving the Pentagon Papers, they will convict themselves of theft for reading the Papers.

#### Theft

Daniel Ellsberg is charged with stealing government property. Tony Russo is charged with receiving stolen government property. But, since the Pentagon Papers are a history of U.S. involvement in Vietnam, the real question is: Can American citizens be charged with stealing their own history? The government says, yes, and is willing to use the law in unprecedented, repressive ways to enforce that ownership.

The theft and receiving statute has always applied to the permanent or substantial loss of tangible government property. But in the case of the Pentagon Papers, no theft of physical property occurred. Ellsberg was in authorized possession of the documents for his work and Russo was entitled to receive them. No one was deprived of permanent or substantial use of the documents. At the time of the alleged theft, Ellsberg was the only person at RAND using them. Furthermore, the government still has all of the original documents. Ellsberg and Russo just made sure that the rest of us could read copies too.

At the beginning of the case, the government maintained that the Pentagon Papers, that is the physical books, belonged to the government and that Russo and Ellsberg were chargeable for theft just as anyone could be charged with, for example, stealing a book from the Library of Congress. However, when, during debate, the government discovered that it did not own the physical documents, the government shifted its

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*The judgement is that, because North Vietnam's economy and organization is predominantly rural and not highly interdependent, attacks on industrial targets are not likely to contribute either to interdiction or to persuasion of the regime. Strikes at population targets (per se) are likely not only to create a counterproductive wave of revulsion abroad and at home, but greatly to increase the risk of enlarging the war with China and the Soviet Union. Destruction of locks and dams, however—if handled right—might (perhaps after the next pause) offer promise. It should be studied. Such destruction does not kill or drown people. By shallow-flooding the rice, it leads after time to widespread starvation (more than a million?) unless food is provided—which we could offer to do "at the conference table."*

John T. McNaughton  
January 18, 1966  
(Beacon IV, p.43)



his rice paddy, mowed down by a machine gun, everyone one of us is hit. . . . The group within the United States wants to intimidate and terrorize the way of the Vietnamese nation is the human group in its entirety."

Nixon and Kissinger realize the consequences of "losing" the South just as well as Pham Van Dong; that's why they are prepared to continue their genocidal strategy indefinitely into the future. In the minds of the power-lustful, genocide in Indochina is a cheap price to pay to prevent—not the falling of dominoes—but the spreading of ideas of liberation. Fortunately, the Vietnamese image of liberation is a powerful one and America's genocidal military terror has not crushed it; if anything, it has highlighted its strength and reflected it back to America more vividly.

Although the Movement in the United States has been greatly inspired by the Vietnamese struggle, we still have more to learn about what liberation really means, concretely, as a day to day experience. We need to look at the ways in which the Vietnamese relate to one another as comrades in their struggle in the belly of the whale. The Vietnamese do not have telephones, and rice paddies and jungles are quite different from our inner-city streets and suburban lanes; but we have very similar needs when it comes to the ways in which we relate to each other as human beings.

Basically, the Movement is not tight enough. It is unable to be sufficiently critical with itself mainly because as individuals we are not really as liberated and open as we would like to think—nowhere near it. It would help a lot, then, for us to know more about *kiem thao* (criticism/self-criticism) and the way in which the Vietnamese practice it and the success they derive from it. *Kiem thao* is to NLF education what Harvard is to the military-industrial complex—and it's instructive to see who is winning, and why and how.

I suspect that *kiem thao* has made the difference between victory and defeat. Everyone in the Vietnamese liberation forces practices *kiem thao* daily, or nearly so. In the military ranks daily *kiem thao* sessions occur in the three-person cell, which is the basic unit of the liberation fighters. Less frequently, progressively larger sessions are held. The purpose of the session is for the men and women to open up to each other as much as possible in order to build solidarity and promote day-to-day morale. In one of the interviews in RAND's study of "Viet Cong Motivation and Morale" an NLF member of the rank and file said: "Yes, it has a good effect. I would compare [*kiem thao*] sessions to a mirror with which I could look at my face. If my face had a stain, I could see it through the mirror in order to clean it up."

*Kiem thao* sessions benefit the group as well as the individual. The group gains in cohesiveness as each individual airs the hang-ups he or she has with others before they grow to the point of becoming insolubly bitter. "Let me give you an example," said Nguyen Van Mung, A fighter, in another interview. "For some reason I do not like you and think you are bad. But I keep this to myself and think that I am right. Now, in a meeting, I criticize you and you defend yourself. Other people will listen to us and join in the discussion. This way will help us know each other better, and thus our friendship will be consolidated."

Seeing oneself reflected openly and critically by one's peers narrows the distance between some abstract self-image and reality. Breaking through the game of "face" is a considerable accomplishment, one that all do not realize. Some leave the ranks and flock to Sai-

gon's defector program as a result of being hurt, or "losing face" from criticism sessions. Most make it through the initial stages, however, and seem to develop stronger revolutionary identities as a result.

The sessions are exceedingly democratic in that members of the rank and file are encouraged to criticize the cadres. As one cadre remarked: "In self-criticism sessions, I promised I would make corrections, and after that I felt relaxed. . . . Criticism is a good method, and it is a token of mutual affection in a unit. If there were any errors, we would help each other to correct and avoid them. . . . [Also] criticism is always fair because it is based on the ideas of several people and of the group, not of a single person or a few people." Thus, out of the openness shared over increasingly long periods of time comes a supportive atmosphere (an end in itself) which allows the touchy aspects of necessary criticism to be dealt with positively.

This spirit of collective criticism extends to the people in general: cadres encourage the villagers to criticize members of the Front. The most important thing for the NLF troops is their relationship with the people. So, if the villagers feel that something is wrong, the cadres want to know about it.

Kiem thao breaks down alienation. Paulo Freire says that the legitimacy of a revolution is the extent to which it can carry on a "courageous dialogue" with the people. Dialogue is the essence of the Vietnamese Resistance, both within the ranks and with the people. To be dialogical is to be revolutionary, in Vietnam or in America. The Vietnamese recognize that revolutions are not made by the leaders for the people or vice versa, but only by both working together. The dialogue encounter is the way people break out of ignorance of themselves and of their compatriots, and conquer fear while adding increased awareness of their world, freeing the sense of their own importance. In *kiem thao* we have one of the best examples of the Gandhian principle of *satyagraha*—"truth every minute."

The NLF has, through *kiem thao*, succeeded in leveling traditional Vietnamese authority patterns which are intensely vertical. Peer authority is what liberation is all about; liberation means energy, energy whose magnitude is many orders greater than anything that can derive from anomic vertical authority patterns. That is why the NLF has won.

Here at home we hear faint sounds resembling *kiem thao* from some women's groups, a few radical therapists, and others; but some, like the Esalen style, are a shuck because they are not political nor are they task oriented. Individual therapy has to go hand in hand with a program for social change.

In Vietnam a new man and woman are developing. In the West the new person is still abstract. Can we be real? We'd better be. This means that in every movement project we have to devote a good part of our energies to inter-personal relationships as ends in themselves. There will be many crises in the future and we have to be able to come together and stay together. Emergencies like dumping the Dike Bomber (something we all have to pitch in on even if we can only work a few days or a few hours) require ad hoc relationships that must hold together. The long haul is most important though; it's there that we must learn to distinguish honest criticism from the sadistic and hostile putdown, the supportive gesture from the manipulative ploy. We must love each other—and, remember who the real enemy is.

—Tony Russo



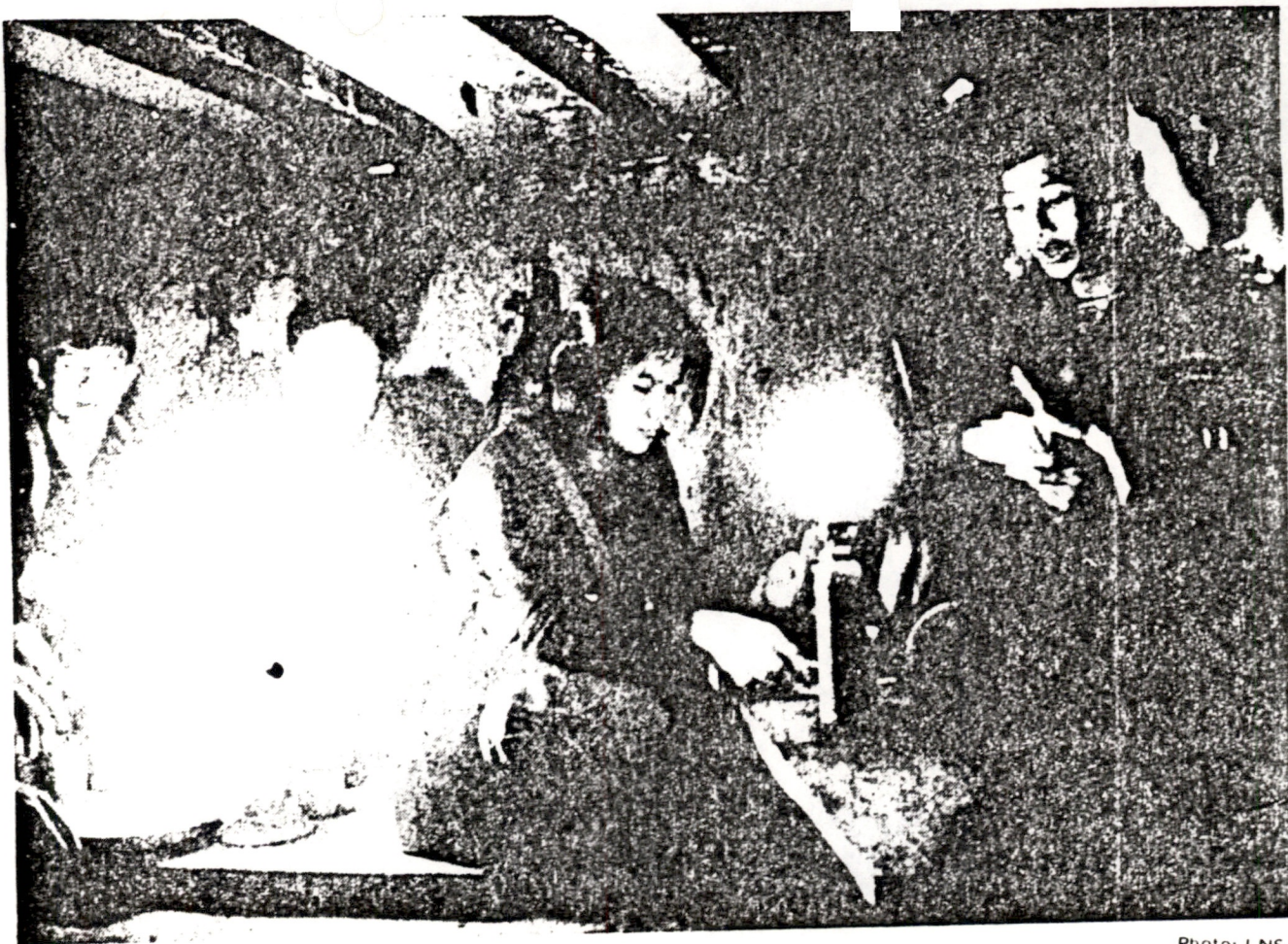


Photo: LNS

# KIEM THAO

The Vietnamese Resistance has survived and is stronger than ever because of the spirit, vitality and cohesiveness that is continually manifested in the ranks. In 1964, according to the Pentagon Papers, Pham Van Dong told J.B. Seaborn (the Canadian ICC delegate) that: "I suffer to see the war go on, develop, intensify, Yet our people are determined to struggle. It is impossible, quite impossible (excuse me for saying this) for you Westerners to understand the force of the people's will to resist and to continue. The struggle of the people exceeds the imagination. It has astonished us too." If Vietnamese leaders were astonished at their people's capacity for struggle in 1964, their confidence must be extremely solid now after passing the test of the global flogging administered for years by Johnson, McNamara, Nixon and Kissinger.

In the same conversation with Seaborn, Pham Van Dong went on to say: "The Democratic Republic of Vietnam realizes that the 'loss' of the South for the Americans would set off (what was the atomic expression?) a chain reaction which would extend much further. . . if the war gets worse, we shall suffer greatly, but we shall win. If we win in the South, the people of the world will turn against the USA. Our people will, therefore, accept the sacrifices, whatever they may be."

The Vietnamese have long recognized the position of Third World leadership that history has assigned them. As Sartre has said: "When a peasant falls in



charges from theft of the document to theft of the information! The government now maintains that Ellsberg and Russo stole "the arrangement of the words on the pages" of the Papers and "the ideas conveyed by that arrangement." By using the theft statute in this way, the Executive Branch is trying to stretch it to become the kind of information control law which Congress has repeatedly rejected.

In America, everyone, except the government, has a right to a copyright. Precisely because of the totalitarian implications, the government has always been denied proprietary rights over information. Instead, government information belongs to the collective people who make up the government and the nation. In limited situations where Congress believes that the general dissemination of particular information would be injurious to the people, it acts to restrict that information by statute as it has done in the case of codes, atomic energy information, and defense information given to a foreign power with intent to injure the American people. Individuals who interfere with that information are subject to prosecution under those statutes, not theft. These statutes exist because in democratic America where the government cannot own information a person certainly cannot be charged with theft of government information.

During pre-trial hearings, Melville Nimmer, the country's leading expert on copyright law, wrote a brief of *amicus curiae* for the American Civil Liberties Union in which he said that this was the first time in American history that the government was claiming a property interest in information. He said that there is no precedent and no basis in law for the charge of stealing information from the government and that the setting of such a precedent now would overturn the historical rights of Americans as guaranteed by the Constitution.

The only similar case is *People v. Kunkin*, now pending before the California Supreme Court. Fred P. Graham of *The New York Times* has called it "the little Pentagon Papers case." In this case, a disgruntled employee of the State Attorney General's Office gave the *Los Angeles Free Press* an original roster of state undercover narcotics agents and a xeroxed copy of a memo about an incomplete investigation of a campus police chief. After the *Free Press* printed this information, Kunkin, the editor and publisher at the time, was charged with receiving stolen property. Kunkin was acquitted of theft for receiving the xeroxed memo, but convicted for receiving the original roster. The California Court of Appeals upheld the conviction. H. Peter Young, the attorney in this case and also a member of Russo's legal team, says that the defendants will appeal the case to the Supreme Court if the California Supreme Court upholds the conviction. If the conviction is overturned, the state also vows to appeal to the Supreme Court.

The "little Pentagon Papers case" could set a bad precedent for the big Pentagon Papers case. If Ellsberg and Russo are convicted for theft, the Executive Branch will have succeeded in using the Judicial Branch to produce a new, repressive information control law which the Legislative Branch has always refused to enact! The government will be able to own information; there will be no limits to government secrecy; and any one who might release, print or read such information would be liable to prosecution for stealing and receiving contraband words.

Thus, the issues in this trial have to do with domes-

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*The United States not involved in the overthrow of the Diem regime.*

Henry Cabot Lodge  
U.S. Ambassador in Saigon  
June 30, 1964  
*The New York Times*

*We are launched on a course from which there is no respectable turning back: the overthrow of the Diem Government. There is no turning back in part because US prestige is already publicly committed to this end in large measure and will become more so as facts leak out.*

Henry Cabot Lodge  
Cable to Washington  
August 28, 1963  
(GPO 3, p. 20)

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tic repression and international aggression. What's on trial is not just Daniel Ellsberg and Anthony Russo. You and I are also on trial. A conviction on any one of these counts will have profound effects on all Americans and on the rest of the world, especially the people of the Third World, who will be the victims of future secret, technological, remote-controlled Presidential wars.

#### Part II: Judicial Politics

Before the wiretap episode, the trial had been rather sedate. Judge Byrne, a smooth, 42-year-old bachelor has made it clear that he wants Order in the Court. No Chicago for him. As a novice on the bench with aspirations of higher political fortunes, the trial could play a crucial role in his political future.

On the one hand, Byrne tries to project a fair, rational and even reformist image to the press. He likes to show how bright he is and gets uptight when legal debates start going over his head. Meanwhile, on the other hand, he is manipulating the hell out of the trial. All defense motions for dismissal were, of course, denied as were most of the other motions.

Crucial motions concerned jury selection. The defense discovered that the Clerk had improperly excused 11,000 prospective jurors without consulting the Chief Judge. For example, a person who returned a jury questionnaire saying, "I think that the government should be convicted" was excused for "health" reasons. The defense also unsuccessfully contested the fact that youth were 38% underrepresented in the jury pool because the pool was drawn from voter registration lists pre-dating the enfranchisement of 18-year-olds. Blacks, Chicanos, Native Americans and poor people were also underrepresented. Although Byrne was Director of the Scranton Commission that found that youth were alienated because they were excluded from judicial and political processes, he didn't feel that it applied to this case.

The final coup came when the Judge decided to short circuit the jury selection process by questioning the jurors himself—an unusual practice in his district. The defense was tricked into a chambers conference where they thought they were to discuss the questions to be put to jurors. Instead, away from the press, the Judge curtly announced his own list. In chambers, by the way, Byrne refers to David R. Nissen, the prosecutor, as "Dave" and refuses to acknowledge Russo and Ellsberg when they try to speak. Byrne and Nissen are former Justice Department colleagues.

The defense was particularly concerned about plac-



ing the right questions to the jury because, unlike the government, the defense did not have access to much information about the prospective jurors. In the trial of Dr. Spock, for example, it was reported that the government ran security checks on 5,000 prospective jurors.

In the first jury panel of 33, 22 had personal or family ties to the military or defense industries. Several had security clearances. Leonard Boudin, Ellsberg's chief attorney, remarked: "We would like to have a civilian trial, not a military court martial." However, the final jury has turned out to be 8 women and 4 men, only one holding a security clearance. Most claim to be uninformed about the Pentagon Papers and to have no strong opinions on the war. All but two are middle-aged. Most of the women defined themselves as "housewives." There is one Black man serving as an alternate juror.

#### The Stay

The stay of the Pentagon Papers Trial arose out of a government's refusal to reveal the parties or contents of a wiretapped conversation involving one of the defense lawyers or their consultants. Ellsberg's consultants are Morton H. Halperin and Richard Falk; Russo's are Tom Hayden and Robert Scheer. The government contends that the conversation had nothing to do with the case and that the court should not "jeopardize" the listening device by divulging it because it involves a "foreign intelligence operation."

The defense actually learned about the wiretap accidentally. On January 24, 1972, the defense had moved for disclosure of electronic surveillance. The government responded with counter motions and then, after the Judge granted the defense request, complained about overwork in having to go through all the surveillance logs. On July 10th, the government handed the court an affidavit dated June 8th saying that there had been no surveillance of the defendants.

Then, about 4:00 PM on Friday, July 21st, after the jury had been sworn in and after the defense team had left the courtroom, the government filed another affidavit saying: "None of the oral or wire communications of any of the (defense team) have been overheard except as may hereafter be disclosed to the Court *in camera*. . . ." (in secret to the Judge). Notice of this was sent to the defense. But, then, still later that afternoon the government also submitted a surveillance log *without* notifying the defense.

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*The loss of Southeast Asia would have serious economic consequences for many nations of the free world and conversely would add significant resources to the Soviet Bloc. Southeast Asia, especially Malaya and Indonesia, is the principal world source of natural rubber and tin, and producer of petroleum and other strategically important commodities. The rice exports of Burma, Indochina and Thailand are critically important potential as a market for the industrialized countries of the free world.*

National Security Council Statement of Policy  
January 16, 1954  
(GPO 9, pp. 221-222)

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#### Plan of Action for South Vietnam

##### 1. US aims:

70%—To avoid a humiliating US defeat (to our reputation as a guarantor).

20%—To keep SVN (and then adjacent) territory from Chinese hands.

10%—To permit the people of SVN to enjoy a better, freer way of life.

ALSO—To emerge from crisis without unacceptable taint from methods used.

NOT—To "help a friend," although it would be hard to stay in if asked out.

John T. McNaughton, Asst. Sec. of Defense

March 24, 1965

(Beacon III, p. 695)

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During arguments the following Monday morning when the defense charged that the government's affidavit was purposely vague and not in compliance with the Court's order, the Honorable Wm. Matthew Byrne, who is usually as slick as a grease pole, inadvertently blurted out that the government had given him surveillance data.

Surprise and rage erupted in the courtroom. Matt Byrne slapped his hand against his face in a gesture of "Oh, no, what have I done now!" When asked, "When?" the Judge said he didn't know, but that he had seen it "during the weekend." When he refused to disclose the surveillance data, the defense decided to appeal for disclosure rather than going on with the trial. When the Ninth Circuit Court of Appeals denied the defense move, defense then appealed to Justice Douglas for a stay in order to permit the Supreme Court to hear the matter. The government asked the Court to overrule Douglas, but on August 5th, Chief Justice, Warren E. Burger, announced that the other Justices had declined to do so.

At the last court session on Wednesday, August 9th, defense attorneys, Leonard Boudin and Leonard Weinglass, announced to a startled courtroom that Russo and Ellsberg really "want to have a trial on the merits of the issues." In the surprise motion which Boudin said "may be a first" in Federal judicial history, the defense informed the court that Ellsberg and Russo are willing to waive their right to move for dismissal of the case on double jeopardy grounds if Judge Byrne dismisses the present jury.

The legal issues are still unclear here because the Pentagon Papers Trial is the first ever to be stayed after a jury has been sworn in. Since jeopardy attaches when a jury is sworn, discharge of the present jury and picking of a new one would probably amount to double jeopardy. But in waiving their double jeopardy rights, Russo and Ellsberg cleared the way for the trial to continue with the possibility of a new jury.

Boudin and Weinglass argued that the jury should be discharged because, during the long stay, their supposedly neutral attitudes might become "tainted" and "infected" by publicity surrounding the trial and the defendants. David R. Nissen, the government's prose-

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*We are [in Vietnam] first, because a friendly nation has asked us for help against the Communist aggression."*

President Johnson

State of the Union Address

January 4, 1965



present involvement with the Pentagon Papers case began when the FBI appeared at his home on June 19, 1971, six days after *The New York Times* started printing the Papers. The encounter was terse. "Are you Russo?" "Yes." "We want to talk to you about Ellsberg." "I do not wish to talk to you."

Although most of his time is spent working on his defense and speaking out against Nixon's policies on Vietnam, he still maintains other interests from prisoners' rights to writing poetry and "turning communities into schools." He lives in Santa Monica with his wife, Katherine Barkley. At a press conference on the first day of jury selection, he summarized his view of the Trial: "President Nixon is the international outlaw who dares indict Daniel Ellsberg and me for releasing the Pentagon Papers. If we are conspirators, then the U.S. Constitution is dead; if we are spies, then the American people are the enemy; if we are thieves, then the government, not the people, owns history."

[Inquiries and requests for Tony to speak should be sent to Ms. Norma Whittaker at The Pentagon Papers' Peace Project; 125 W. 4th St., Rm. 612; Los Angeles, Calif. 90013; 213-489-4250].  
—J.K.

## PRISONER'S RIGHTS

Here

Exercise your fourth right  
Be spurred by your third,  
(World)

Your second this second,  
Your first right arm protects,  
You from harm.

Right arm,  
Right Om,  
Right On.  
Right now!

Right here! (Where the bullshit  
stops!)

No better than what?!

Tomorrow,

You better matter.

—Tony Russo

Tony Russo and his wife, Katherine Barkley



Photo: A Thousand Words





# TONY RUSSO

Tony Russo, 36, is the only person who has already spent time (47 days) in prison for his connection with the Pentagon Papers case. Although he could have used a grant of transactional immunity to stay out of jail and prevent the present indictment that threatens him with 35 years in prison, he chose instead to refuse to cooperate with government attempts to force him to talk in secret before a Los Angeles grand jury in June, 1971 about his relations with Ellsberg. While serving his contempt sentence, he fasted in protest of prison conditions and was beaten up by guards several times and thrown in the hole. He was freed in October by a court order directing the government to provide him with a transcript of his grand jury testimony. However, when he appeared to testify under this more open condition, David R. Nissen, the U.S. Attorney prosecuting the Pentagon Papers case, violated the court order by saying that he would not give Russo a copy of any testimony. So, he again refused to testify in secret.

Anthony J. Russo, Jr., was born in Suffolk, Virginia, attended the Virginia Polytechnic Institute, and began his professional career as a research engineer at NASA where he worked on the first space capsule and wrote such popular bestsellers as "Estimates of Attenuation and Reflection of Telemetering Signals by Ionized Flow Fields Surrounding Typical Reentry Bodies." In 1961, he entered Princeton University where he received an M.S. in Aeronautical Engineering and then an M.A. from the Woodrow Wilson School of Public and International Affairs.

He joined the RAND Corporation in June, 1964, hoping that he could "bring sanity to the area of defense planning." He already had a sense, from some French students, that the war was wrong, but the fundamental change in his attitudes occurred during his 24 months in Vietnam where he worked on RAND's continuing "Viet Cong Motivation and Morale Study." The experience of interviewing "enemy" prisoners

held in prisons all over South Vietnam led him to respect and admire their integrity and dedication. He realized that America was the real enemy of the Vietnamese people.

While in Vietnam Tony also analyzed the crop destruction program. Although he demonstrated that 100 pounds of rice were denied to civilians for every pound denied to the NLF and recommended that the program be discontinued, his report was disregarded when General Westmoreland told McNamara that he had taken a helicopter ride over effected areas and found the program to be very effective. Tony also disproved a study by E.J. Mitchell purporting to show that poor people supported the Saigon government while wealthier Vietnamese supported the NLF. The policy implications, of course, were that any attempts by the Saigon regime to improve social welfare and reform the land distribution system would create more problems and increase NLF support! However, Russo's reverse conclusions were again ignored. (See: "Economic and Social Correlates of Government Control in South Vietnam" by Russo in *Anger, Violence, and Politics* edited by Feierabend, et al., 1972).

Russo and Ellsberg had met briefly in 1965 at the RAND villa in Saigon, but did not become close friends until 1968 when they found their offices across the hall from each other at RAND in Santa Monica, California. In the Fall of 1969 when Ellsberg decided to copy the Pentagon Papers, Tony was glad to help. He had a friend, Lynda Sinay, who had a copying machine at her advertising agency in Los Angeles. Together, they turned that machine into an instrument of nonviolent resistance, as Tony likes to say now: "Z-Rocks the State!"

While Ellsberg explored ways of releasing the Papers, Tony, who had already been fired from RAND for "budgetary reasons," explored the country, participated in anti-war activities, and took a research job with the L.A. County Probation Department. His



cutting attorney, accused the defense of "impugning the integrity" of the judicial system by suggesting that the jurors might disobey the Judge's orders not to say, see, hear or read anything about the trial. "I assure you, your Honor," said Nissen, "that the government will not, as it has not in the past, engage in any publicity about this case. But, of course, if the defense continues its propaganda barrage, then a question about the jury might arise." He suggested that it was too early to rule on discharge of the jury.

Judge Byrne leaned forward from his high chair and matter-of-factly announced that according to his reading of the Supreme Court's action, "all proceedings have stopped. I will not rule on the present motions until the stay has ended." He then brought the jury in and instructed them accordingly: "If you happen to see or hear anything relating to the trial on the radio or TV, turn it off or walk out of the room. Have someone in your family go through the newspaper each day and clip out all articles relating to the trial. If anyone persists in trying to talk to you about the trial, let the Court know and we will take care of it. You may go know until further notice."

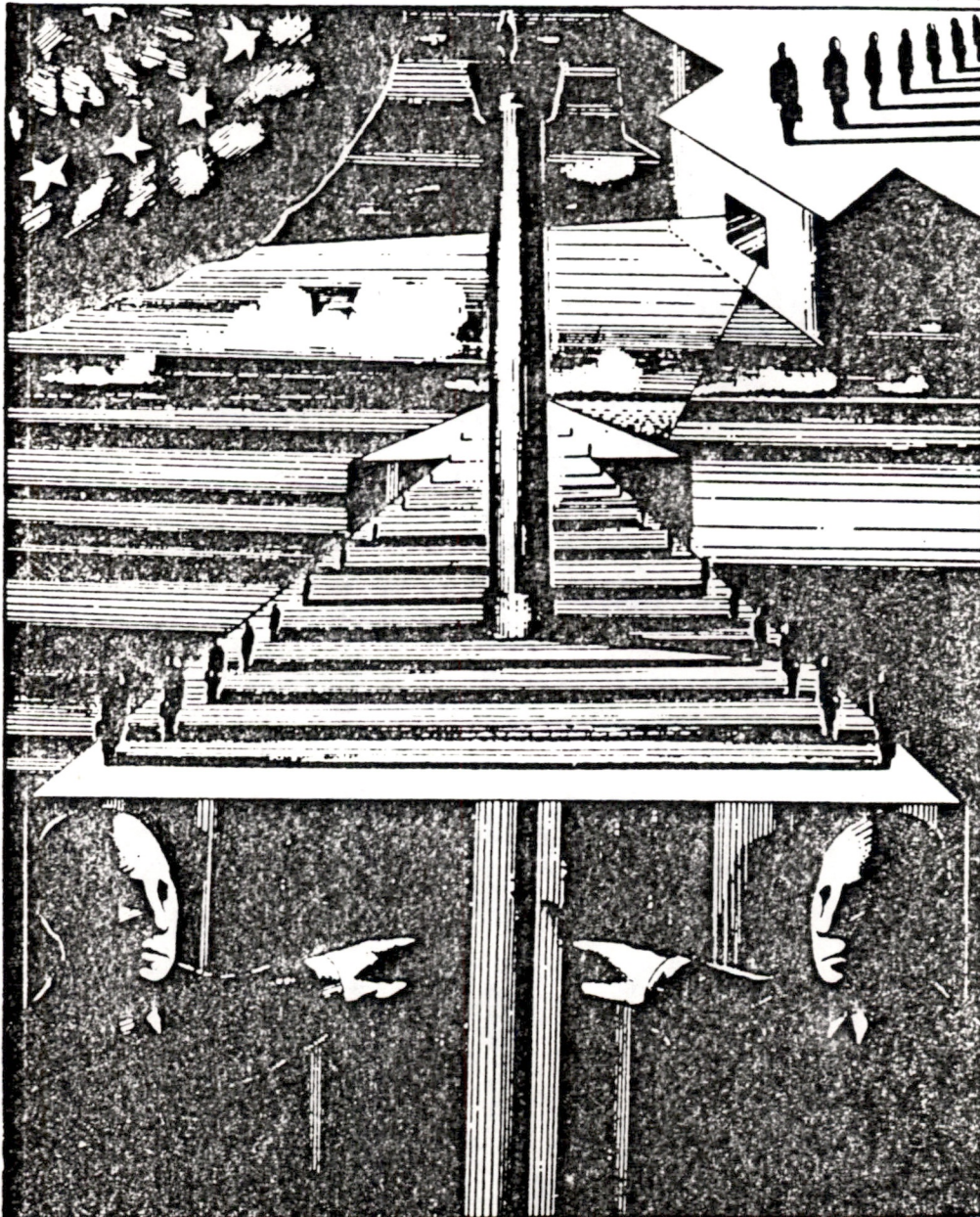
After the session, the defense attorneys and defend-

ants explained the motions. "The trial should never have happened in the first place," said Ellsberg. But, continued Boudin, "Since the government insists on prosecuting, we want to have this trial on the basis of its merits. The wiretap question is an extremely important Constitutional issue which must be litigated, but we do not want to take advantage of this stay to have the whole trial thrown out on technical grounds. If the Judge will not dismiss the charges, then it must go to a jury."

Ellsberg and Russo said that they feel so strongly about the issues raised by the trial that they are willing to risk conviction rather than to avoid confrontation with the government over the issues of the war on Vietnam, government secrecy and lying, and the people's right to know. They feel that the jury, as representatives of the people, will vindicate their actions.

"During the period of this stay," said Russo, "I intend to continue working against the war and, especially against the re-election of Richard Nixon. Nixon is the real criminal in this trial, not Dan and I." Ellsberg added: "The survival of the Vietnamese people depends on Richard Nixon not being elected." —J.K.

Paul Spina/LNS





that it will work out for us and if there are other causes that are more in need.

MK: What do you anticipate is ahead for you and Dan if the trial resumes or if it does not?

Pat: It depends on so many things. When the trial is over, if there's an acquittal or if there's no conviction, Dan will do some writing and some teaching and I'll continue the radio program and have children and learn and live and look forward to the future. If there's the trial, then that's what we'll be doing for three months or so. It's a little hard to say but for the long range future, Dan is a creative intellectual and he has a lot of writing to do and a lot of reading to do and he looks forward to doing that. We can't really plan for the future until we know the status of the trial, so it looks like we'll have another year of uncertainty. Even that becomes something we learn to deal with and just say, "Well, I can't plan ahead", and that's not the worst thing either.

MK: Most of the defendants in political trials have been men. The lawyers are men and the judges are men, the police and guards are men and the trials tend to project the whole *machismo* image. The only time women enter the picture is as members of the jury where they are often prized or feared as being perhaps too emotional or too soft. As Mr. B., a juror in the Spock trial, told Jessica Mitford: "Don't misunderstand me, I love women. But we had a job to do, and who wants a woman, who thinks with her feelings about these things?" I am wondering how this issue relates to the Pentagon Papers and the trial.

Pat: I think you have hit on an issue that is central to the Pentagon Papers and the trial. There's not one woman's voice in the Pentagon Papers, not one humane sentiment that asks about the cost of the war in terms of human lives and human agony. Instead, it is all statistics and percentages.

I don't think it is just by chance that the courtroom is filled with male participants or that there are seven women on the jury out of twelve and that most of the alternate jurors are women. It seems that moral issues and human considerations carry more weight with women. But I think the machismo factor is operative in the courtroom as well as in policy-making. Most men have been indoctrinated in the mystique of being number 1, of being competitive, and of U.S. prestige being dependent on our being the most powerful country in the world.

It is an interesting fact that very few political defendants are women. I think we have to ask ourselves why and begin to put ourselves in jeopardy for values that we seem to hold more deeply than men. Of course, in this case very few women had access to the Pentagon Papers. It really is a man's war. One of the things that struck me when I visited Dan in Vietnam was that in two months, I did not meet one man who was happily married, one man who did not have family problems or who wasn't running away from something. Affairs with Vietnamese women or visits to prostitutes were the predominant mode in Vietnam.

I think that tells something too, men who are so involved with calculations, killing and death probably aren't rooted to life processes like families. They are the men to whom that has not been important or for whom it hasn't worked out.

MK: What influence do you think women could or do have in the anti-war movement and on foreign policy?

Pat: I think women have been against the war more than men and earlier than men. The Women's Liberation Movement will do a lot to help women get more active in foreign policy, although I have been disappointed in how it seems that the Women's Liberation Movement has not focused its attention on the war. They seem to have shied away from the issue of the war, perhaps because they feel it is too partisan. I also think we tend to defer to the experts and that's really wrong because we have been the ones who have been right all along. I think we should trust ourselves and inform ourselves and persuade and stand up for what we think. We must pool our energies and see if we can't get the war ended.

MK: Do you think women have been reluctant to take public stands on issues?

Pat: I think that's true and I don't want to speak as if I have been doing it anymore than anyone else, I haven't. But I think it's something we should think about and try to change.

MK: I hear you saying we have a lot to offer and need to find ways to start doing that.

Pat: And to take ourselves very seriously. I think there is a general realization that the machismo factor in foreign policy is operative. But we can change that and have an impact on foreign policy if we involve ourselves more. We tend not to do as much as we should, but since it's a matter of life and death, we must do more.

MK: We are often reluctant to trust our own perceptions.

Pat: Absolutely. I know I was. When I would even discuss the war with Dan, he knew a lot more than I did and I kept losing a lot of arguments and yet knowing I was right, but not trusting those feelings fully. I said, "Well, I don't know all the facts." Instead, I should have informed myself and known the facts and acted on what I felt was right. I did to some degree but I could have done a lot more.

MK: Do you think women should get more involved publicly in speaking against the war?

Pat: Speaking or just in saying that this is the most important issue facing the country. I think women are beginning to organize themselves as a political group and that's important. President Nixon is considered by 62% of the American people as a peace candidate and many people think he is ending the war. Since that is so blatantly untrue, women can do a lot to change that awareness. We can demand more of our Congressmen and Senators as well as explore ways to resist. There is much we can do as a powerful lobby group in American politics.

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*Removal [of] any taint [of] colonialism would be essential to [the] success of [the] operation in Indochina, to attraction of potential Asian support and to forestalling opposition by other Asian and Middle Eastern countries.*

John Foster Dulles, Secretary of State; May 11, 1954; (GPO 9, p. 454)

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# STATE SECRETS

AN INTERVIEW WITH

*william g. florence*

BY KAREN BLASINGAME AND JOHN KINCAID

Although the struggle for peace and freedom has exposed a variety of formal and informal mechanisms of state control, relatively little attention has been drawn to the control functions of State Secrets. State secrecy is more than information control accomplished, in the United States, through the formal mechanism of Executive classification. It is also a process of mystification by which the ruling class seeks to establish a powerful mystique of state omniscience and infallibility.

From the ancient Pharaohs to Richard M. Nixon the functions of state secrecy have hardly changed. Ever since kings and priests arrogated to themselves certain bodies of knowledge, the people have been led to believe that there are secrets which can only be known by a few initiated, educated elites who by virtue of this knowledge are able to carry out the functions of state and determine what is best for the people. Of the Pharaohs it was said (according to John A. Wilson): "Now his majesty knows what takes place. There is nothing at all which he does not know." This was the closely guarded secret of kingship. When the state collapsed, it was said that the king's secret had been "leaked": "Behold, it has come to (a point where) the land is stripped of the kingship by a few irresponsible people. . . the secret of the land, whose limits are unknown, is divulged, so that the (royal) residence is overthrown. . . The secrets of the kings of Upper and Lower Egypt have been divulged."

The same process has also long been at work among the so-called professions. The mystique of professional secrets is well developed in the United States among medical doctors, lawyers, "scientists", college professors, auto mechanics and others. "I am your doctor and I know what is best for your health." "Look, lady, even if I told you what's wrong with your car, you still wouldn't understand." Even as individuals we keep secrets from each other in order to manipulate situations or to present our best selves to others.

Knowledge is power, in part, by virtue of other people's ignorance. When the state succeeds, not only in keeping secrets, but also in convincing the people that

they are being responsible citizens by remaining ignorant, the process of control is complete. "I really can't judge the President's actions in Vietnam because he has more information than I." Although the President of the United States cannot (yet) keep secrets and claim infallibility by divine right, even with Billy Graham, he can accomplish the same ends in the hallowed name of national defense. By manipulating the appropriate symbols of traditional mythology and by defining the international situation in terms of hot and cold warfare, Presidents have been very successful in convincing the people that they should let the government do their thinking for them. The mystique of state secrets is reinforced by a cult of enforced rituals, high priests, indoctrination, initiation into the mysteries of different levels of secrecy, secret passwords, and even secret classifications. Therefore, because the whole system is set up to make people believe that the release of state secrets would cause the state to collapse, we have the spectacle of citizens in a "democracy" accusing other citizens of treason and irresponsibility for exposing these secrets. The ultimate is represented in a comment someone made to one of us: "No, I didn't read the Pentagon Papers. That's secret defense information. The people ain't supposed to know that stuff and I think Ellsberg and that other guy ought to be hung for taking them papers."

In these terms it is quite logical and very necessary that Ellsberg and Russo be prosecuted for theft and espionage. Their act was a fundamental threat to the state. In exposing government crimes, lies and deceit they undercut the whole mystique of state secrets. The real secret, of course, is that the state is a trick and a trap for the gullible.

In this interview with Bill Florence we will explore some aspects of U.S. government secrecy. Now retired, Mr. Florence is a former Pentagon Chief of Secrets. He served in the Air Force for 43 years, 26 of which were served in various capacities as a Defense Department security classification expert. He has testified several times before Congress and is now a consultant to the defense in the Pentagon Papers Trial.



MK: When did you meet Dan?

Pat: I met Dan in 1965 in Washington where he was working for the Defense Department. A mutual friend introduced us and said that Dan was brilliant but a very dangerous man because I'd fall very much in love with him, which I promptly did.

Since neither of us were ready to get married at the time, we went our separate ways for a while. Dan went off to Vietnam where I visited him for two months in the summer of 1966. That was the time when I got a strong sense of the outrage of our involvement in Vietnam. I interviewed refugees who had fled, not from "the enemy" but from American bombs and artillery. The thing they wanted most passionately was peace, not the so-called security we were offering which left them living in cesspools and muddy cemeteries.

Dan was working at that time on reforming some of the worst outrages of American involvement. We had many discussions about the war, but were never able to resolve our different perceptions about the value of the U.S. commitment in Vietnam. I returned home and Dan stayed on in Vietnam another year. He came back to California and we only saw each other occasionally when he would come back to New York. Then we saw each other more and more occasionally until the fall of 1969 when I went out to visit him and never really left him. We were married in the summer of 1970.

MK: Why do you think his and your perceptions of the war were so different?

Pat: At that time Dan was so much a part of the governmental structure that he wore bureaucratic blinders, so that for all he was trying to effect reform, he still looked at the issues in terms of global strategies and U.S. influence in the world. He filtered out his basic human reactions which became submerged in Cold War rhetoric and in a lifetime of training to see things as statistics and as calculated risks.

Also, it's important to realize that when you are in Saigon, you feel the war less than when you are back home because it is not on television every night and you don't read the *New Republic* and *I.F. Stone's Weekly*. You really are cut off in Saigon and surrounded by men who are completely committed to what they are doing and are much more bloody-minded than anyone you know back home.

Coming from an intellectual and artistic world without the bureaucratic conditioning that Dan had received, I reacted very directly to the suffering in Vietnam.

MK: In what way do you feel you were an influence on Dan, especially in causing him to change his view of the war?

Pat: I was one of many influences on Dan. I posed questions and reacted viscerally to the issues. Much more important, Dan's own personal experiences in Vietnam, which gave him a great deal of observation in the field, as well as his reading of the Pentagon Papers when he returned to the U.S., convinced him that our involvement in Vietnam was completely groundless and unjustified and worse than that, immoral and criminal.

Dan is unique in combining three aspects of experience—a high-level decision-making position in Washington, a high-level position in Vietnam, and access to the Pentagon Papers. No other person in the country has had such a combination of experiences and I think this is part of what accounts for Dan's intense commit-

ment against the war.

MK: What was your reaction to the Pentagon Papers when you read them?

Pat: One of real horror and shock, although that may seem naive. I had always been against the war but seeing the callousness and lack of concern for human life on the part of men that I felt were decent but misguided human beings was quite a shock. Throughout the Pentagon Papers one reads the language of torturers. Specifically, they used phrases such as "one more turn of the screw", "pressure", "hot-cold treatment", "water drip technique", "fast full squeeze vs. progressive squeeze and talk". I was horrified at how cynical the government had been about our commitment in Vietnam and how much the American people had been manipulated and treated with contempt. All of these reactions deepened my respect for Dan for having taken great risks to reveal the truth to his fellow Americans.

MK: What was it like for you when Dan decided to make the Pentagon Papers available?

Pat: It was one of the hardest periods of my life. I had just fallen deeply in love and was happier than I had ever been, married to a man who is very loveable. The thought of being separated was extremely painful. Yet there seemed to be no other choice. Dan felt the Papers must come out and, although he protected me as much as he could legally in not involving me in their release, he did share the possible consequences of what he felt he had to do. I knew that if I put our personal welfare above that, the relationship that we had would be destroyed anyway. It would grow sour as the war went on, as the killing went on. How could we possibly not do whatever we could to end the war?

Then there was always the thought of all the suffering that was going on both to Americans, including all the wives that were separated from their husbands and sons either for a tour of duty or for lifetime, and even more acutely, all the Vietnamese, including the hundreds of thousands who were separated from their loved ones or killed or maimed. All of this made it an unquestionable imperative that we do what we could to show the truth about the war.

MK: Then you were in support of Dan's actions?

Pat: Oh yes. Dan is a man of very thoughtful judgment. There is a stereotype that he is impulsive but, in fact, he acts on his convictions which are very deeply considered. When he said that the Papers must be released, I trusted him.

MK: How do you feel about Dan's possible imprisonment?

Pat: That's a very heavy thing to face. The worst part of it would be the separation from Dan. He seems to feel he'd be able to face prison and I think I'd be able to face living again on my own which is the way I spent most of my life. The separation from Dan would only be made bearable because it would be done for such a worthy cause. Part of keeping ourselves healthy now is to say that we will face it, if it happens, but not dwell on it.

MK: Do you and Dan have support from your family for what you believe in and are doing?

Pat: We have moral support from my younger brothers and my stepmother is a great admirer of Dan. However, my father's wealth is a hindrance in raising funds for Dan's defense. People come up and say that they had assumed all along that my father was supporting a good deal of the trial which is categorically not true. A lot of people who do contribute to causes assume



Interviewers: What is the history of government information control acts in this country?

Florence: What we are talking about are *not* legislative acts, but a series of information control actions by the Executive Branch. Congress has imposed some laws for specific types of information, for instance atomic energy information and codes, which are based on the degree of damage that disclosure would cause to the U.S., but these are in contrast to the massive imposition by the Executive Branch of secrecy for administrative purposes. *and political*

The history of the kind of administrative system we know today began around 1917 when the Army and Navy restricted information about military objectives. At the time, these restrictions did not apply outside those departments. The Army started designating military planning information as "secret" with the expectation that it would be recognized by those who used it as requiring special handling.

Between 1917 and the 1930's there was very little use of security classifications. But from the beginning of World War II there was a spread of classification systems very widely within military organizations and, for the first time, into civilian areas of government. After WW II, an Executive Order was proposed to assure coordination between agencies so that information safeguarded by one agency would be accorded like protection by other agencies. President Truman signed such an Executive Order in 1950, followed by revised Orders issued by Eisenhower in 1953 and recently by Nixon.

I: Why the tremendous growth in the use of classification markings?

F: Actual defense requirements of WW II plus a great psychological factor provided for a philosophy of secrecy. People in the Executive Branch wanted to get on the bandwagon, feeling that the use of classifications made them more important.

I: What effect did the Cold War have on the increased use of secrecy? Were people more willing to use and go along with it because of the fear of a "communist threat" to the U.S.?

F: Yes, we were all oriented towards warding off the "communist threat." People in government felt it was necessary to show a defense against communism, or in many instances they felt they were going to attack communism. They felt they had to keep information about what they were doing to themselves—or, at least, to distinguish between those authorized to see information and the alleged communists.

When these distinctions are represented by mechanical things like classification markings, the human trait is to use them in every possible way. This is what actually happened in the early 1950's.

I: Could you explain the mechanics of the system?

F: The President, as head of the Executive Branch, has ordered that where there is an item of information within the Executive Branch whose disclosure to someone would have an immediately damaging effect on our defense efforts, that information should be limited to persons in the Executive Branch who need to use it. The heads of departments and agencies must follow certain rules if their agencies have such information. They must designate people to identify such information, and must declassify the information when there is no longer a need for secrecy. Since the order applies only within the Executive Branch, agencies are supposed to formulate rules for disseminating such information to others outside the Executive Branch. In

practice, those regulations are actually disregarded so that classification markings have become a support or tool for serving the interests of anyone in the Executive Branch.

I: Is it true that they classify rubber band and paper clip orders, and that the mania has gone so far as to include newspaper articles?

F: These absurd examples reflect efforts to protect the existence of entire programs from public scrutiny. Thus the expenditure of money for any part of the program must be kept secret as well as more direct information on the program. I once had to straighten out a situation where some painters could not go to a store and buy some paint for the outside of a building which was being used for a secret project.

I: How much does the classification system cost the American taxpayer?

F: It is very difficult to assess the cost because a great deal is simply in administrative actions that must be applied anyhow in handling documents. But the calculation of the costs in handling things that never should have been classified is fairly easy. We could use a figure of something more than \$100 million in wastage alone.

*[On July 25th Earth News reported that: "According to a study conducted by Representative Moorhead... the government is spending twice as much money to conceal information from the public as it is spending to provide information. The Congressman's study showed that while \$126.3 million was spent for classifying information, only \$64 million was spent for public information programs. The costs of classifying secrets may of course be incomplete, since it excludes secret funding programs."]*

I: You testified before the House last Spring that 99.9% of the government's classified documents should not be classified at all. How did you arrive at that figure?

F: It came from a personal analysis of classification practices I had observed throughout the U.S. in the offices of government contractors and in military areas. In some cases I saw files of hundreds of documents bearing classification markings, but the documents contained information that had no relationship to current defense activities. The disclosure of information in those documents could not have been prejudicial to national defense interests. Therefore, none of those documents warranted the protection afforded by classification.

My estimate of overclassification is also generally supported by others. The chief of a Department of Defense office having responsibility for conducting security surveys at contractor facilities believes that my estimate is too low. You also have to reflect on the fact that the Department of State has testified to holding documents in secrecy for 75 years. I submit that the practice of turning an official record into a mummy and keeping it from the people is as damaging to us as the practice of book-burning which we all deplored so much a few years ago.

I: Would you say, then, that the main purpose of the system is to keep information from the American people?

F: The policy and purpose of the Executive Orders were not so, but individuals used it as they saw fit. Things were classified without regard to the limits of the Executive Order. The result is a censorship policy of the entire Executive Branch from the clerical level to the President.



Congressman Moorhead has observed that there are some 55,000 arms pumping up and down in government offices stamping "confidential" on stacks of government documents: more than 18,000 government employees are wielding "secret" stamps; and a censorship elite of nearly 3,000 bureaucrats has authority to stamp "top secret" on public records.

I: After the release of the Pentagon Papers, President Nixon issued a new order which he said would reduce the amount of classification and speed up the process of declassifying old documents. I believe they're now up to World War II. What in your experience has been the effect of this?

F: The actions have had the effect of reducing security classifications to some degree, but when you're speaking in terms of millions upon millions of documents bearing classification markings, it is hard to tell the difference. There is a numerical reduction, but the net effect is minimal.

I: Did Ellsberg and Russo actually violate the law by giving the Pentagon Papers to Congress and the American people?

F: Russo and Ellsberg are charged with defrauding the U.S. government's lawful function of controlling classified studies. This has never been charged before. The only law which uses the words "classified information" is one which applies only to government employees (which Ellsberg and Russo were not) and only when they give that information to a foreign agent. Therefore, the charges reflect an effort by the Executive Branch to punish them for actions which contradict the Executive Branch philosophy of secrecy.

I: Was the purpose of prosecuting this case to strengthen the classification system so as to prevent people like Ellsberg and Russo from releasing information to Congress and the people?

F: It is that, but also the broader philosophy of Executive control over the policies and people of this country. I am sure that something bordering on a dictator type view led to the prosecutive action in this case. The security classification system was used here as a definable mechanical excuse for the charge involved. The action that Ellsberg and Russo took was an attack on Executive power. The action was viewed by the White House and the National Security Council as a contradiction of their idea of thought control.

I: Dan Ellsberg and others have talked about the rise of Executive power since World War II; what role has the security classification system played in that rise of power?

F: The secrecy system expanded concurrently with the philosophy of expanded Executive power. The system was not a cause of that rise of power. It was not used as a tool. As the Executive Branch arrogated power to itself, there was this burgeoning of Executive self-government in the U.S. Secrecy just went along as an integral part of expanded Executive power.

I: Is the classification system now a tool to help maintain that power, for instance by keeping information from Congress so that it cannot make decisions?

F: Yes. Most people in the Executive Branch believe they are the government. There is a built in reaction where the Executive Branch will impose secrecy as a means of insuring their philosophy. They feel that they should make decisions for the people of the United States.

I: So, to use their own Cold War language, the secrecy system acts as an iron curtain between the Executive Branch and the people?

F: Yes. It is a curtain that will remain until there is a true change in the philosophy of government.

## THE PENTAGON PAPERS PEACE PROJECT

*The Pentagon Papers Project is doing political and educational work around the trial. The Project has a number of educational and organizing resources available.*

**CREDIBILITY GAP:** a 128 page paperback of extensive quotes from the Pentagon Papers compiled by Len Ackland and published by AFSC. Individual copies are available for \$1.25.

**THE PENTAGON PAPER:** a newspaper published twice a month with the War Bulletin covering the trial, the Pentagon Papers, and the War. Subscriptions are available at \$5.00 a year.

**THE PENTAGON PAPERS SLIDE SHOW:** a slide show on the history and development of the war as viewed through the insights of the Pentagon Papers. Individual sets with scripts are available at \$25.

**THE PENTAGON PAPERS TRIAL:** a short pamphlet on the history of the case, the charges, the trial issues, the Papers and related matters. Individual copies are available at 50¢; bulk orders available on request.

*The Project is funded by sales and contributions, and is independent of the Fund. Inquiries, requests and contributions may be directed to the Project at 125 West 4th Street, Rm. 612; Los Angeles, California 90013; (213) 489-4250.*

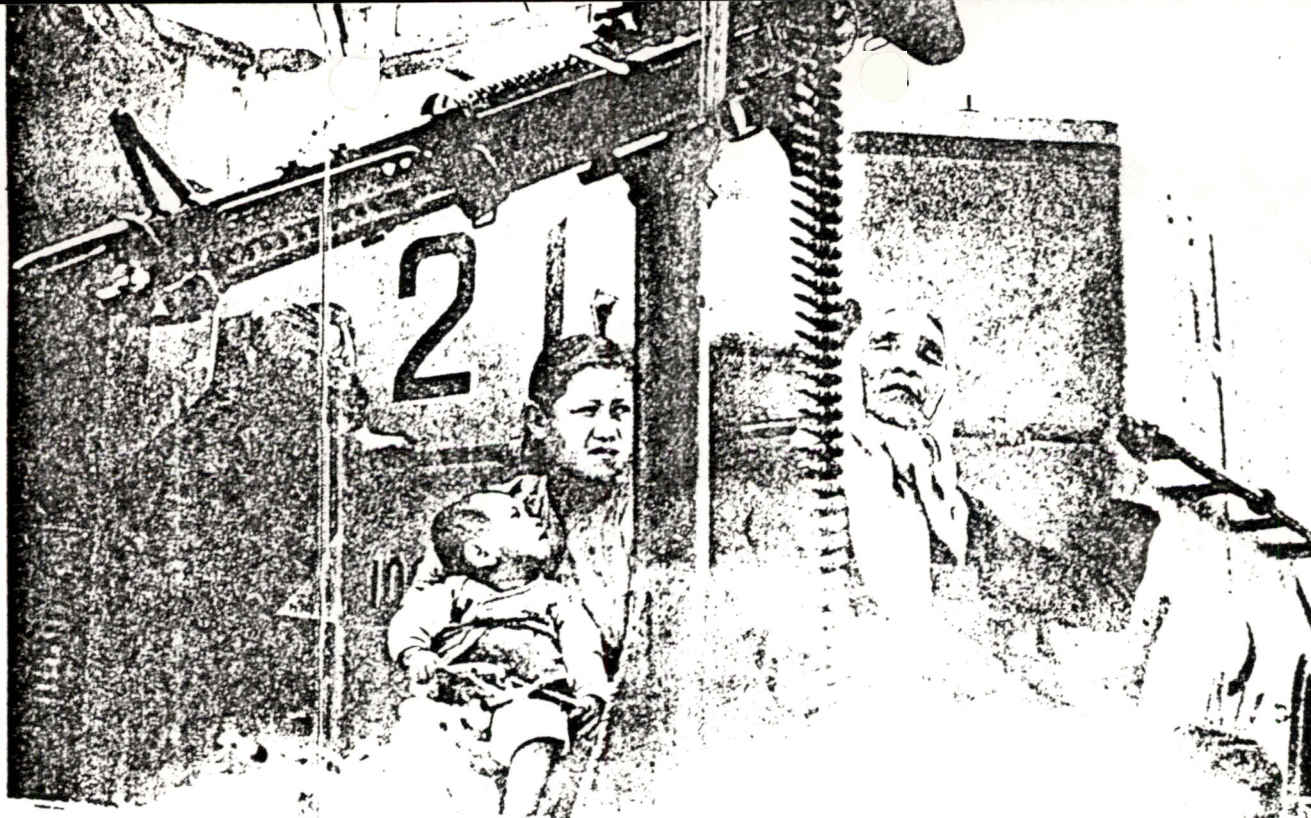
## THE PENTAGON PAPERS FUND

*The Pentagon Papers Fund for the Defense of Human and Civil Liberties, Inc., has been established to provide legal defense and cover legal expenses for Daniel Ellsberg, Anthony Russo and others subject to grand jury investigations and possible future indictments in connection with the Pentagon Papers. Stanley K. Sheinbaum is Chairman of the Fund.*

*The cost of defending freedom against government inquisitions and prosecutions has risen enormously. Proper legal defense in the Pentagon Papers trial will run well over one half million dollars. The defense is already considerably in debt. Involved in this case, for example, are enormous legal research costs arising, in part, out of the unprecedented nature of the charges. Also, since the jury must decide whether or not the Pentagon Papers are national defense documents, the defense must research each page of the documents and all public literature on the war to prove that the documents are not national defense related in terms of the requirements needed for conviction on the present charges.*

*Therefore, contributions are much needed. Inquiries and contributions may be directed to The Pentagon Papers Fund, Inc.; P.O. Box 1630; Grand Central Station, New York, New York 10017.*





# IT'S A MAN'S WAR

## AN INTERVIEW WITH

# Patricia Ellsberg

**Marylou Kincaid:** Despite all the publicity Dan has gotten, people seem to know very little about you, Pat. In fact, a recent article described you as someone who "seems content to bask in her husband's lime-light." I'm wondering what your reaction is to this?

**Patricia Ellsberg:** I was really somewhat nettled by it because it paints a much more passive picture of me than I think is accurate. But there is also some truth in it since Dan has been doing all the speaking and I have been somewhat shy and retiring. I have begun to speak more publicly in the last few weeks since the trial has let out. I appeared on the *Today Show* and on a local TV program in Boston. In the next few weeks I will be reaching out to as many media outlets as possible with a message about the trial and what the Pentagon Papers show about the war. I'll be traveling with Dan and speaking to people up until the election after which we plan a brief vacation.

**MK:** What is your background?

**Pat:** I graduated from Radcliffe in 1959 with honors in history and literature and then started my own radio program in 1960. It was a weekly half-hour show in which I interviewed people in the arts and politics, and that began my real education. I was a member of

the quiet generation, having graduated at the end of the Eisenhower era. Through the course of doing interviews, I became much more political than I had been in college and particularly concerned about problems in the areas of civil rights and the war in Vietnam.

I interviewed people like David Halberstam and when I was in Vietnam, I interviewed John Paul Vann, Neil Sheehan and several Vietnamese civilians who were working with AID programs but were very critical of the South Vietnamese government.

I also did interviews on educational television and co-produced a television program for Public Broadcasting which was called "The Medium Is the Medium." It was a half-hour special in which we got multi-media slide shows and artists into TV studios and developed new techniques through using TV itself as an artistic tool.

Before the Pentagon Papers came out I was working on a book in connection with the radio program but since then I have been working with the trial. It's been like riding a roller coaster so there hasn't been much time for working on the book. When the trial is over, I want to resume the radio program and the book.



What I would draw from my own experience at this point is a very considerable rise in people's willingness to accept it as fact. Regrettably, there is a tendency to accept it as a fact of life and not to take any responsibility for changing it. There is a widespread reaction: well, all right they do it, but then doesn't everybody? I think that more discussion and education is needed on this point.

I've just begun raising the question: Do you think the President has an unlimited right to lie? Now I don't think that question is yet a familiar one to people. But, I'm pretty hopeful by the reaction to it. It is an absolute conversation stopper. I find that an interviewer or someone in a discussion is likely to go absolutely blank at the question. The defenses have not yet mobilized in support of the proposition that the Presidents have an unlimited right to lie.

Then, of course, the next question is: If you don't think they have such a right, how should we set about limiting their actual practice of lying? You can't rely on them to do it. The most recent example in people's minds is the Watergate investigation being conducted entirely by the Justice Department when their own personnel are heavily implicated in the bugging.

So, I think the Pentagon Papers have opened this discussion which has great promise for changing public consciousness. I think it's early on the scale of intellectual change to expect very decisive change to have occurred already. Of course, it cannot occur too fast when the lives of so many Vietnamese are at stake. It hasn't occurred fast enough to save Indochina from the last million tons of bombs which Nixon has dropped since the Papers came out.

By the way, I'm almost in a quandry when people ask me, as they always do, whether I think the release of the Papers had any effect. On the one hand, I like to take the opportunity to point out that the war indeed is still going on. That is the hard news that most needs saying, especially before this election. But at the same time, when I talk about the million tons of bombs, I am increasingly coming to suspect that it feeds the mood of despair that any individual or any amount of truth can change a policy.

On the other hand, there is a sort of smugness or complacency about many listeners who want evidence that they are not compelled to take any action to end the war, they feel it wouldn't have any effect. I think there are people who ask me that question in hopes that they will be able to say: You see, I don't have to do anything because putting out the Pentagon Papers didn't do anything and I can't do anything approaching that. I am very reluctant to encourage that attitude, but I also don't want to lie people into changing their lives. I don't want to exaggerate the hopes of any one act or to deprecate the risks.

I would like them to face the fact that the war can't end unless they act, unless a lot of people end their complicity. In my opinion, they should be willing to take some significant risks in their lives just as we have quite unjustifiably risked the lives of all Indochinese and as we have asked many young Americans to risk their lives in support of U.S. policy. A number of Americans must find the willingness to take some risks in their own private, immediate lives—risks of their jobs and risks of the attitudes of other people, just as Ramsey Clark and Jane Fonda took the risk and, really, the certainty of a great deal of public abuse—abuse all led and conducted by the Administration.

One can look at their examples or lives as showing

that nothing would do that you are going to pay a heavy personal price if you step out of line. Or you can see them as examples of the fact that Americans can change their lives. After all, for each of the three of us, just to take those examples, what we're doing now is quite a change from what we were doing some years ago. It shows that Americans can respond to the examples of still other Americans and do what they ought to do. So I would certainly prefer that they be seen in this light.

JK: How do you define the main issues in the trial?

Dan: We've talked about the issues before, and I'm sure you'll be covering them well enough elsewhere, so I won't go into them now. . . But, I would like to say one thing.

I think the newspapers have not given enough attention to the threat to First Amendment freedoms of the press represented by this trial. It is, after all, the first prosecution of a newspaper source and if it is successful, it will certainly not be the last. If Tony and I are convicted on any one of the counts, we will have an official secrets act that will be used. There will be a new law if we are convicted and it will have changed in the direction of censorship. The government will be able to threaten and convict other sources and, for that matter, newspaper men, on these kinds of charges.

Now that ought to be regarded as extremely ominous by any newspaper that doesn't want to exist on government hand-outs. Regrettably I would have to conclude that there are a great many newspapers and newspaper men in this country who would be content to operate on government hand-outs, at least in the field of foreign affairs, despite the fact that this area has expanded to become crucial to all of our lives. On his trips through China and Russia I'm sure that President Nixon was favorably impressed by their degree of control of the media and discussion. When he thinks of improving America, I don't think it's in the direction of rehabilitating the First Amendment.

What's very dismaying is to find how many newspaper people would seem to find little to fear in such an arrangement. I suppose they accompany him on these trips and observe that there are newspapers in the Soviet Union and that newspaper people go home at the end of the day, have dinner with their families and lead a normal life. You don't really need a First Amendment to be a newspaper man. If you're content to live with the party line, you are fulfilling your vocation.

That's exactly where we could be in a few years if our prosecution sets a trend, and it will, if it's successful. The possibility of having an authoritarian regime here is very dangerous, not only for newspapers and other media, but for this country and for other countries that we would oppress even more than we do now. After all, in a very real sense, we have already entered a post-Constitutional era in American history. So it's very important that our prosecution fail.

Well, there is a lot more I would like to say to the readers of WIN, but I've given you enough typing. I might add that among all the peace groups in the nation, I think I was most famous among WIN people—well before the Papers—as the person who had given more gift subscriptions to WIN than anyone else in human history. So they knew they had an admirer somewhere out there and I can tell them that they certainly did have an effect in making it easier for me to do what I had to do. I certainly find WIN a good journal, a good community of readers.



# BOOKS



## THE PENTAGON PAPERS

Missing from this issue of WIN is a full-scale discussion of the Pentagon Papers. That, however, is an enormous task that has already been well undertaken elsewhere. Furthermore, there really isn't any substitute for reading the Pentagon Papers themselves. So, with the Papers and other discussions and analyses already available and in preparation, most people will find a full year's reading. Hopefully, the following notes will serve as a guide to that reading.

The Pentagon Papers are a 47-volume Defense Department study of the Presidential decision-making processes that created and escalated our war on Vietnam. The Study, entitled "History of U.S. Decision-Making Process on Viet Nam Policy," was commissioned in 1967 by the Secretary of Defense, Robert S. McNamara, and compiled by 36 "experts" over a year and a half period. Designed to be "encyclopedic and objective," the Papers comprise 3,000 pages of analysis and history of the war and Presidential policy-making between 1940 and 1968 with about 4,000 appended pages of official documents written by presidents, cabinet members, ambassadors, generals and other government officials. The Pentagon stamped the original Papers "top secret" as a matter of routine practice and produced only 15 copies.

Thanks to Ellsberg and Russo the public now has access to three incomplete editions of the Papers and one digest (*Credibility Gap*).

The Pentagon Papers as Published by The New York Times, (Bantam: \$2.25, 667 pp.; also in hardback by Quadrangle with index) is a series of interpretive essays written by Neil Sheehan and others, and supplemented by relevant original documents. It is good for a general picture of the contents of the Papers, but has too few documents.

The Pentagon Papers—Senator Gravel Edition, (\$20 in paper) is a four volume set of the Papers that were given to Senator Gravel and then passed to Beacon Press which is now under investigation and harassment for publishing them. Beacon has also recently published a fifth volume of sorts entitled *Critical Essays and An Index to Volumes I-IV* (\$5.00 in paper).

The third and most comprehensive, but censored, edition entitled *U.S.-Vietnam Relations, 1945-1967* has been printed by the Government Printing Office in 12 volumes selling for a \$50.00 bargain.

The Gravel edition includes many documents censored from the GPO edition, such as those for the 1964-65 Johnson years. But the GPO edition contains the many documents on the early origins of the war omitted from the Gravel edition. For material on our involvement in Diem's overthrow and assassination, you must go to the Gravel edition. The GPO edition is censored here in a rather obvious, botched manner. For our involvement in Laos, you must

go to the GPO edition. And so it goes as you move back and forth between these editions trying to find the truth.

—J.K.

## PAPERS ON THE WAR

Daniel Ellsberg

New York: Simon & Schuster, 1972

\$2.95 paperback, 309 pp.

In addition to the Pentagon Papers, the Kissinger Papers and, unfortunately, his earlier contributions to the war, Daniel Ellsberg has now released his own *Papers On the War*. The papers are excellent, but heavy, so heavy in fact that they may not be read as widely as they should be. This is particularly true of the essential essay, "The Quagmire Myth and the Stalemate Machine."

The Papers are about the man, Daniel Ellsberg, and his ideas about Vietnam as set in the broad context of his thinking which developed in three stages of viewing Vietnam as: "a problem, to help solve it; a stalemate, to help extricate ourselves with grace; a crime, to expose and resist it, to try to stop it immediately, to seek moral and political change." By the time he reached this stage, he came to the point where he "looked around a very large seminar table. . . and it came to me that I was the only person present who was a potential defendant in a war crimes trial."

As a former Marine Corps officer with a Harvard Ph.D. in economics and as a strategic analyst at RAND, Ellsberg entered the Defense Department equipped with a full set of Cold War credentials and the intellectual tools of the new science of politics and management. While serving as Special Assistant to the Assistant Secretary of Defense for International Security, he began to suspect that much of the problem with Vietnam was due to "bad information" coming into the Pentagon from Saigon. So, in 1965 he volunteered to serve on the team of the U.S.'s super counter-insurgency expert, Major General Edward G. Lansdale.

Lansdale was one of the first Americans in Vietnam having been sent there as part of a "cold war combat team" in 1954 to conduct clandestine military and psychological warfare operations against North Vietnam and indigenous South Vietnamese nationalists. In the North, the team conducted rumor campaigns to discredit the Viet Minh nationalists and to encourage people to move South. Although Lansdale, as his report appears in the Pentagon Papers, said that "Viet-minh relations with the mass of the population during the fighting had been exemplary" as opposed to the Vietnamese National Army which was more "adept at cowing a population into feeding them, providing them with girls," his team circulated rumors about alleged Viet Minh atrocities and even hired astrologers "to write predictions about coming disasters to certain Vietminh leaders and undertakings, and to predict unity in the South. The work was carried out under the direction of Lt. Phillips, based on our concept of the use of astrology for psywar in Southeast Asia."

The team also helped to organize airlifts and other means of transporting people south and "spent the last days of Hanoi in contaminating the oil supply of the bus company for a gradual wreckage of engines in the buses, in taking the first actions for delayed sabotage of the railroad (which required teamwork with a CIA special technical team in Japan who performed their part brilliantly), and in writing detailed notes of potential targets for future paramilitary operations. . . ." In the South, the team helped to organize political and military support for Ngo Dinh Diem whom the United States wanted to install as South Vietnam's leader. It must also be remembered that at that time the United States still



hoped for a re-unification of Vietnam under the rule of Diem's southern regime.

Of course, when Ellsberg joined Lansdale's team, he was not aware of Lansdale's earlier exploits in subverting the Geneva Accords and starting the war. It is to Ellsberg's credit, then, that his intellectual tools helped him to see very quickly that:

*the U.S. Government, starting ignorant, did not, would not, learn. There was a whole set of . . . institutional "anti-learning" mechanisms working to preserve and guarantee unadaptive and unsuccessful behavior: the fast turnover in personnel; the lack of institutional memory at any level; the failure to study history, to analyze or even record operational experience or mistakes; the effective pressures for optimistically false reporting at every level, for describing "progress" rather than problems or failure, thus concealing the very need for change in approach or for learning. Well, helping the U.S. Government learn—in this case, learn how to learn—was something, perhaps, I could do; that had been my business.*

In doing this:

*I came to spend much of my time driving the roads on personal field trips—and on some occasions, accompanying, in order to observe, Vietnamese or U.S. troops operating in jungles and rice paddies—simply because there was no other reliable way to get at realities screened out by successive "progress"-hungry headquarters as field reports flowed upward.*

In this vein his essays, "Visit to an Insecure Province" and "The Day Loc Tien was Pacified" are excellent.

By this time he came reluctantly to the conclusion that the war was stalemated.

*The process of reaching these conclusions was, quite simply, the most frustrating, disappointing, disillusioning period of my life. I had come to Vietnam to learn, but also to help us succeed; and the learning was as bitter as the failure.*

Ellsberg also realized that:

*To all the anti-learning mechanisms operating at the field level, the high-level decision-making process adds the barrier of extreme secrecy. My earlier study of crisis decisions had reflected and confirmed my conviction that a prerequisite to improving the government's performance was that it become self-aware, that it begin systematically to discover and analyze its own "hidden history."*

So, when he returned to the States, he proposed two sorts of studies to McNamara: "a set of case histories of field projects in Vietnam; and a high-level study of U.S. decision-making in Vietnam. . . ." A few weeks later McNamara himself proposed the Pentagon Papers.

When the Papers were completed under the leadership of Leslie Gelb (with Ellsberg playing a minor role in their preparation) and he received authorized access to them, Ellsberg approached their study with the quagmire theory which had become widely accepted, even in dove circles. The quagmire theory holds that the U.S. stumbled into Vietnam with good intentions and got bogged down by misinformation and Presidential gradualism. As Arthur Schlesinger, Jr., put it:

*. . . the policy of "one more step" lured the United States deeper and deeper into the morass. In retrospect, Vietnam is a triumph of the politics of inadvertence. We have achieved our present entanglement, not after due and deliberate consideration, but through a series of small decisions. It is not only idle but unfair to seek out guilty men. Each step in deepening of the American commitment was reasonably*

*regarded at the time as the last that would be necessary. [The Bitter Heritage: 1968, p. 47]*

Even on the face of it, without the insights of the Pentagon Papers, this theory is suspect. Twenty some years is a long time for even the Executive Branch to be practicing the innocent politics of inadvertence. Of course, the theory provides a very convenient basis for avoiding the crucial issues of aggression, crimes, and guilt. When Ellsberg tested the theory against the Pentagon Papers, it failed. Instead, he discovered what any person can now see for him or herself that American Presidents were deliberately operating a "stalemate machine" in efforts to postpone defeat and humiliation in their criminal war of aggression against the Vietnamese.

The principal case study in this test is the Taylor/Rostow mission to Saigon in the Fall of 1961 which is the same example used by Schlesinger to typify the quagmire model. From all the press reports about the mission, the public "could only conclude that Taylor and Rostow had recommended against sending combat forces and had assured the President that the lesser measures he adopted, which did not include combat units and which allegedly encompassed their recommendations, were adequate to meet U.S. objectives."

But, as the documents in the Pentagon Papers show, according to Ellsberg, "Taylor came back to tell the President that the situation was 'serious but not hopeless': i.e., not hopeless if and only if the President promptly dispatched sizeable U.S. combat units, with the understanding that more troops, and bombing of the North, would probably be required as later steps." Taylor reported that the sending of ground combat troops would be "an essential action if we are to reverse the current downward trend of events." "In fact," he reported, "I do not believe that our program to save South Vietnam will succeed without it." He suggested an "initial size" of about 8,000. Furthermore, the Joint Chiefs of Staff, Robert McNamara and his deputy, Roswell Gilpatric, also agreed substantially with these recommendations.

But Kennedy chose stalemate by sending only advisors, knowing full well that this step was inadequate. This decision, says Ellsberg, is characteristic of all the major escalation decisions: the initial \$10 million commitment to the French in 1950; the rejection of direct entry into the French war in favor of support for Diem in 1954; the overthrow of Diem in 1963; the decision to bomb the North in the Fall of 1964; and the decision to bomb the North steadily in 1965.

The stalemate machine is guided by two political gyroscopes locked in different directions: 1) "Do not lose the rest of Vietnam to Communist control before the next election" and 2) "Do not commit U.S. ground troops to a land war in Asia, either."

*The standard resolution of this dilemma has been . . . to turn away from long-run aims and the measures associated with them, concentrating almost exclusively upon the aim of minimizing the short-run risk of anti-Communist collapse or Communist takeovers. . . the policy relies heavily on means that do not raise domestic apprehension and opposition—e.g., military aid, covert actions, "advisors"—but it also includes those types of actions restricted under Rule 2 judged by the President minimally necessary to this short-run aim. Their acceptability and probable sequence of adoption are roughly in the order listed below.*

*Rule 2 (extended): Do not, unless essential to satisfy Rule 1 in the immediate or an earlier crisis:*

*(a) Bomb South Vietnam or Laos;*



His first academic success came from a book [*Nuclear Weapons and Foreign Policy*, 1963] that promoted nuclear weapons in foreign policy.

So, if Nixon is re-elected by a landslide with heavy Congressional support, I would find it very difficult to say what course of action would hold any promise of ending the war. That's why I feel that this election is of very, very crucial importance for this country and for Indochina. I think that the reservations some people have had about working hard for McGovern, because of his human limitations, are not appropriate. As far as I can see, the choice between the two candidates seems to be very sharply the choice between war and peace in Indochina. I really cannot think of any other way to save the Indochinese from many more years of bombing that is even remotely comparable to trying to dethrone Richard Nixon.

JK: How is it that liberal, Harvard-educated, urbane men can become so involved and wrapped up in this whole process or conspiracy of lies and brutality?

Dan: I think Albert Speer's comment on this is very apt—that there is, unfortunately, no necessary correlation between intelligence and decency. I wish that Speer's memoirs [*Inside the Third Reich*] would be read by more of these people because some of them hold jobs comparable in importance and power to his. My mention of his memoirs in my book seems generally to be misinterpreted as though I were comparing myself to Speer. That would be unrealistic and pretentious. I really had no such thought. Speer was, after all, the number two man in the regime and had far more influence on policies than I. What is important here is what Speer had to say about the motives

that lead men to ignore their own decent impulses, their own doubts about an obviously brutal and murderous policy and, indeed, to continue their involvement in it. I think that almost anyone who has served the government in any capacity from stenographer to Secretary of Defense can learn a good deal from his reflections. Combined with ambition, habits of obedience and giving the leaders the benefit of the doubt, the opportunity to work for and with power is a seductive lure. Everyone wants to ignore what is actually being done, what one is actually participating in now in the hopes of someday being in a position to exert some humane influence on policy, to give it a push in a better direction. In staying within the machinery of power it is just impossible to disentangle your more selfish interests from the more altruistic. The net effect is to keep people silent in the presence of what they really know to be lies and terrible inhumanity.

JK: What has been your experience in talking with people about the Pentagon Papers? Are people willing to believe that the President and his advisors lie, or has there been a process of denial, a refusal to believe even the Pentagon Papers?

Dan: It seems to me that the patterns of Presidential deception are quite widely accepted as a result of the Papers, and people hardly even bother to argue about it. On interview programs, for instance, I find that interviewers, who are very prudent politically and bureaucratically, don't hesitate to speak of Presidential deception in ways they would never have dared to a year or two ago.

Photo: A Thousand Words





We adjourned for a morning to a vigil outside the Post Office building where he was sentenced in Philadelphia. That was the first picket line, vigil, that I had ever taken part in. For two years, I had been working one way or another, mainly from the inside, to end the war as a consultant in research and what-not for the Executive Branch and various Presidential candidates in 1968. My views were quite well known to insiders. But the idea of crossing the line and sort of projecting myself to outsiders was something that I had doubts about because I did know very well that you can't be both an inside and an outside critic.

One can do a great deal of criticism on the inside, much more than observers guess. You can be fairly blunt in criticisms of policy and still get ahead and be listened to on the inside, if you are sufficiently reliable in keeping your criticisms within the family and not joining outside pressures, that is, the "enemy"—Congress or the press or the public. I guess the rationale for it is, in part, that to express criticisms to the outside is to jeopardize the jobs of your colleagues or, more broadly, the political life of the Administration, whereas to express yourself however bluntly on the inside is a way of changing policy without jeopardizing political lives.

But, in any case, I knew I couldn't do both and, thus, to stand in this picket line was not only unfamiliar to me, but a kind of gesture that was the first step toward ending my professional career. As the same time, I found it psychologically very liberating to conquer the small worries of humiliation, ridicule and risk to one's job that are involved in declaring yourself publicly. It frees you from being so effected when it comes to future expressions.

So, I now had a direct example in mind of young Americans who were willing to risk and even sacrifice their freedom to resist collaborating in a war that I also felt was wrong. In my own mind, I immediately connected their danger with danger that I was very familiar with and had been part of in the lives of men in combat who really exhibit physical courage almost routinely in support of their country's policies and the safety of their friends. It's a kind of danger that people aren't expected to see or show in civilian life. I realized that, in the same spirit of dedication and courage, these young men were doing what they had to do to resist the war absolutely and that I had no excuse for doing less. In short, that made me open the list of "options" that I ought to consider to include those that involved a greater risk. Rather quickly, of course, I turned my attention to releasing the Pentagon Papers.

So when people ask me how a person comes to change his or her life this much or to take risks of this sort, I feel that personal examples play a great role. In my case, I did have these examples largely from the AFSC and WRI ranks. Incidentally, three years have passed since their Haverford conference and their triennial conference has again been held, this time, in England. I wasn't able to attend because I was on trial, but during the pre-trial period I received a letter from the conference signed, as far as I could tell, by everyone there including Pastor Niemoller and Randy Kehler, who is now out of prison. It was a very, very welcome message.

By the way, I once visited Randy in prison along with Patricia (I also went another time by myself) because I wanted to reassure her about the risks we were running, and for her to see that a man could be free,

even in prison, and that prison wasn't anything to be frightened of. I'm pretty sure Randy would display that, and he did.

Of course, I didn't want her at that point to be implicated by reading the Papers before they were released. So she really had to take on faith my conviction that it was worth doing, that the risks were worth taking and that it might accomplish something. She did have doubts occasionally because I was having trouble getting any other member of the Establishment to help release them. She had to ask: How can you be sure this is worthwhile because, after all, these other people are mature, dedicated people and they don't seem to agree? All I could say was: They haven't read the Papers. I'm the only one who has and I can't blame them for being mistaken, as I see it, in their assessment. I was, of course, disappointed that I couldn't get anyone to read them, but since I was the only one who had read them, I had to trust my own judgment. Then Patricia trusted my judgment. In the end, when she was able to read them, her reaction was very strong. She just said, "You had to do it!"

JK: Is there a reason why you did not release the negotiations volumes?

Dan: Yes, I wanted to get in the way of the bombing and killing, not the negotiations. I thought that the Administration would use that exposure as an excuse for the lack of success in negotiations. Actually, they would have revealed that there never had been any real negotiations because they were never prepared to accept a settlement short of what the other side would have to regard as a defeat. And it would be a defeat! But even so, the revelation of negotiating channels might possibly have harmed some private negotiations or, at least, the Administration would almost certainly claim that. So I felt that the disadvantages of releasing them in this case outweighed the advantages.

By the way, I think that no longer applies since the Administration itself has unilaterally revealed its own private negotiations with the other side. I now think that in general there would be no harm and a good deal to be gained by the public having that information. I haven't re-read those volumes for some years so I won't make that statement about every page and paragraph. But, in any case, the government, the Justice Department, is making the decision on its own because they have included those volumes in the indictment and apparently are going to present them as evidence.

JK: The portions released by Jack Anderson were rather favorable to the Administration.

Dan: Yes, I suspect that it was a direct Administration leak. In particular, they seemed to favor Henry Kissinger to very distorted degree. That suggests that what Anderson got was a memo prepared on the basis of the negotiations volumes, but prepared within the White House, probably by Kissinger's staff, for Nixon. It would be in the spirit of such memos to present Kissinger's own earlier dealings in a very favorable light.

JK: What do you think should be our next steps if Nixon is re-elected?

Dan: I definitely think he will continue the war and will postpone defeat and may well escalate the war in terms of bombing. I think, and I don't say this casually, that there is a real possibility that he would ultimately be led to use nuclear weapons. I say this, not on the basis of special information, but because of the public record of his own belief in nuclear weapons and the very unusual belief in them by Henry Kissinger.



- (b) Bomb North Vietnam;
- (c) Commit U.S. combat troops to Vietnam;
- (d) Commit U.S. combat troops to Laos or Cambodia;
- (e) Institute wartime domestic controls;
- (f) Destroy Hanoi or Haiphong or the dike system, or mine Haiphong harbor;
- (g) Mobilize reserves;
- (h) Assume full, overt administrative authority and military command in South Vietnam;
- (i) Invade North Vietnam;
- (j) Use nuclear weapons.

Ellsberg traces Rule 1 to McCarthyism, the Cold War and, in particular the impact of the "fall" of China in 1949 on American policies toward Indochina. It was then that John F. Kennedy said to his fellow Congressmen: "...over this weekend we have learned the extent of the disaster that has befallen China and the United States. The responsibility for the failure of our foreign policy in the Far East rests squarely with the White House and the Department of State." Ten years later, Kennedy found himself hung by his own petard.

By trying to obey the very ambitious Rule 1 without breaking Rule 2, Presidents are led into what Ellsberg calls "the Indochina bind." In order to extricate themselves from the bind, Presidents have to "go slow and small", announcing very limited, incremental measures while claiming that they are "adequate to achieve ambitious publicly announced goals." "By doing so, they win public support for programs that will, in fact, assure avoidance of short-term defeat, though probably not much more than that; at the same time they avoid public pressures that could result from frankness on prospects, pressures either to take much riskier measures to win and get the problem over with or to get out of Vietnam, accepting a defeat that might cut losses for the country but might mean eventual disaster for the Administration..."

Therefore, "the Presidents conclude, the public must be lied to: about what the President's decision is, what advice he rejects, what he was told to expect, what he foresees and intends for the future." "Thus all these documents and opinions had to be concealed, by secrecy and deception."

The essence of Rule 2 is the prohibition against U.S. ground combat troops. But Ellsberg stops short (partly because of the time of his writing this piece) of explaining the full ramifications of the extended Rule 2 which has been so enormously flexible, especially under the Old Cold Warrior, Nixon. The political pressures against Johnson and Nixon to withdraw troops has been effective, but not against the bombing and automated warfare. Perhaps, then, Rule 2 should be refined to read: Do not expend American lives in enforcing Rule 1. In that case, the President clearly has plenty of options within extended Rule 2 to annihilate the other side. But, then, with the advent of sophisticated, remote-controlled, military technology "the Indochina bind" which characterized the decision-making of Truman, Eisenhower, Kennedy and Johnson is fairly well resolved under Nixon who is just beginning to perfect what might now be called "the Indochina blind."

Johnson's bombing program, though quantitatively less than Nixon's, was more visible because large numbers of Americans were also being killed. That Nixon has been able to make his war almost invisible and, apparently, less repugnant domestically, by lowering American deaths, withdrawing troops, and reducing draft calls is, in part, corroborated by John Mueller's study of opinion polls on the Korean and Vietnam wars in which he found that public support for a war is a "function of the logarithm to the total number of American casualties. . . . everytime American casualties in-

creased by a factor of 10. . . support for the war dropped by 15 percentage points."

Furthermore, the introduction of the Electronic Battlefield in Indochina has vastly increased the emotional distance between American weapons and Asian deaths. Since other observations have revealed that about 75% of America's soldiers do not fire their weapons directly at people in battle and that "the average firer will have less resistance to firing on a house or a tree than upon a human being" (S.L.A. Marshall in *Men Against Fire*), General Williamson's oft quoted comment about the Electronic Battlefield makes more sense as being an attempt "to avoid having the American young men stand toe-to-toe, eyeball-to-eyeball, or even rifle-to-rifle against an enemy. . . . How less painful it is to use firepower to fight him at a distance." This, combined with the above, may be said to constitute "the Indochina blind."

Nixon has also been successful in exploiting what Ellsberg recognizes as central loopholes available "to a patriotic and resolute Administration willing to rely on Asian allies and the threat or use of U.S. airpower. . ." Nixon's allies take the forms of mercenaries and Vietnamization. Through the propaganda about the Vietnamization program, Nixon has put the Vietnamese in the position of mounting an offensive to expose the farce of the program, but in so doing, Nixon has been able to make political hay by calling it an invasion and using it as another excuse to escalate the bombing. Thus, Rule 1 is covered and its motivating pressures even reinforced in such a way as to increase the President's operational space within Rule 2 as evidenced by his moving up to "f" on Ellsberg's extended Rule 2 scale.

In this book Ellsberg focuses on this stalemate model of Presidential decision-making, descriptive case studies, and other miscellaneous themes. He omits race, class and economics in his discussion of the factors influencing Presidential decisions. However, these are, as he notes, hard to get at concretely because they are the most secret factors in policymaking.

*My inferences on domestic political considerations, for example, came initially almost entirely from personal experience, particularly as a special assistant*

## LIFETIME SUBSCRIPTIONS—\$100

Here's a way to insure that you'll never again be bothered by those would-be-humorous WIN renewal announcements and at the same time make a substantial commitment to the cause of nonviolent social change by supporting WIN Magazine. Such a demonstration of faith in WIN at this time would mean far more than year after year of renewals. Please consider helping out in this way.

—WIN



(during a Presidential election), since this is a whole dimension of policy consideration that is often discussed at higher levels but almost never written down for fear of leaks both within the government and to the public. . . . Indeed, a major function of a special assistant, I soon learned, is to deal with what cannot be written down. . . .

In the final pieces Ellsberg discusses the bombing and the question of war crimes. At one point he quotes Brigadier General William C. DePuy as saying in 1967: "The solution in Vietnam is more bombs, more shells, more napalm. . . till the other side cracks and gives up. . . . I don't have much faith in our brainpower, only in our firepower." The last piece deals with "the responsibility of officials in a criminal war." Again Ellsberg focuses on the Cold War mentality and the degree to which it provided American policymakers with an ideological-moral basis for doing whatever they pleased almost without limits. In fact, it is on the question of limits that he raises the most frightening issues.

*The obvious fact that in any given situation, we could annihilate an opponent with nuclear weapons, or even with conventional weapons, produces an almost inevitable feeling among what Richard Barnett calls our "national security managers" that we cannot be doing anything so wrong as long as we refrain from that. As . . . Konrad Kellen, has put it to me, this attitude among high officials can go even further: that an opponent like North Vietnam should feel gratitude to us, and at the very least should give us the small concessions that we are demanding at the moment, simple appreciation of the fact that we have not yet unleashed the full weight of SAC B-52's or of nuclear weapons upon his cities and population.*

Ellsberg quotes Albert Speer in this chapter which is otherwise on his own genuinely introspective reflections. But perhaps the why of Daniel Ellsberg in and out of the Pentagon will come later when he has more time to think about it. For the time being he is too busy trying to help end the war and defend his freedom against Nixon's emerging post-Constitutional regime.

*The ordinary party member was being taught that grand policy was much too complex for him to judge it. Consequently, one felt one was being represented, never called upon to take personal responsibility. The whole structure of the system was aimed at preventing conflicts of conscience from even arising.*

—Albert Speer

—John Kincaid

## THE PAPERS AND THE PAPERS

Sanford J. Ungar

New York: E.P. Dutton, 1972

\$7.95 hardback, 319 pp.

Sixteen months ago, *The New York Times*, followed by papers around the country, began printing the secret Pentagon Papers officially entitled "History of U.S. Decision-Making Process on Viet Nam Policy." Yet, today, these same newspapers along with radio and TV media persist in portraying the war as one between a marauding North Vietnam and a helpless South Vietnamese democracy aided by a slefless, if tired, Big PX across the Pacific.

It comes as no surprise that the news media have virtually ignored the contents of the Papers; in fact, we're lucky the Papers were printed at all. Until two days before the *Times* began publishing the Pentagon Papers on June 13, 1971, a fierce battle raged inside the paper's power structure about whether or not the Papers were news "fit to print." This

and much more is documented in Ungar's fast-moving and meticulously researched account of *The (Pentagon) Papers* and *The (News) Papers*.

At the *Times*, the ultimate publication decision lay with publisher Arthur Ochs Sulzberger. Lined up against publication were Sulzberger's aides like Harding Bancroft, a former diplomat devoid of newspaper experience, and members of the Wall Street Law firm, Lord, Day and Lord, who handled most of the *Times*' legal business. These men feared that by printing this sensitive and embarrassing history of the war, classified top secret, the *Times* would face legal action by the government.

Not that there was anything unusual in the *Times* printing classified material. In the often incestuous press-government relationship it is standard procedure for high officials, including the President, to leak classified information to further their political ends. But the Pentagon Papers were different. In Ungar's words: "What was enlightening about the collected Papers was the total picture they presented of the United States planning and waging an arguably illegal and undeniably immoral war, all in the name of 'peace.'"

Arguing for freedom of the press, and thus for publication, were the *Times*' reporters, including Neil Sheehan who had received the Papers in late March; the *Times* general counsel; and James Reston, whose own career had been made when the State Department leaked the Yalta Papers to him in 1954. Reston even threatened to publish the Pentagon Papers in his own Massachusetts newspaper, the (Martha's) *Vineyard Gazette*, if the *Times* balked. Sulzberger finally agreed to publish, but limited the space allotment to six pages a day so the *Times* would "not appear to be going overboard."

The *Times*' major competitor, the *Washington Post*, had the "humiliating chore of rewriting what had already appeared in the *Times*." "As intense competitors, the *Times* and the *Post* have a permanent arrangement with United Press International: every night, as soon as the early editions hit the street in New York and Washington, the UPI wirephoto service transmits to each newspaper an instant photograph of the other's front page." But the *Post* got the Papers in a cloak-without-dagger rendezvous in Boston after the *Times* publication was halted by a court order. A debate strikingly similar to the one at the *Times* then ensued in Washington.

An added element in the *Post* debate was the corporate issue. As Ungar, himself a *Post* writer, points out, the *Post* is the epitome of a communications conglomerate. The Washington Post Company is full owner of *Newsweek* and *Art News* magazines, three TV stations, three radio stations and has numerous other holdings. Lawyers for the *Post* feared that government action could be detrimental to the company's corporate holdings. After resignation threats from a prestigious writer and editor, publisher Katherine Graham decided in favor of publication only five minutes before the printing deadline for the June 18 issue.

The press was not the first place tried by Dan Ellsberg. Once he and his RAND colleague, Tony Russo, finished duplicating the Papers in October, 1969, he set off on a mission which made Diogenes' effort pale in comparison. Ellsberg first searched the dark halls of Congress since he had been advised that the umbrella of Congressional immunity would ease the possible legal consequences of releasing the Papers. But Senators Fulbright and McGovern and Congressman McCloskey all found excuses for not making the history public. Eventually, Senator Gravel of Alaska would be the single member of the club to take the risk of giving the Papers to the American people.

Ungar traces all these steps in readable, sensitive detail, but when describing the court battles which followed pub-



lic pressure that did come to be on Nixon in the months after the Pentagon Papers were revealed. I would say that the standing and viability of his policy were very uncertain at that point. Politically, he was in bad shape. Only the announcement of the China trip which was, after all, a fairly spectacular, dramatic one for a man like Nixon, only that really managed to shut off the controversy that arose over the Papers. Regrettably, of course, in the next year he did truly use the dramatic events of the China and Russia trips to gain a free hand to continue the war. He has been pretty successful in that and has had a good deal of cooperation from the media (who had been under very conscious attack by Agnew and others in the Administration) in allowing him to make an enlarged war in Indochina an invisible one with respect to the public.

Well, I have explained what I saw as the tasks that needed doing and why I thought the publication of the Papers would help. Although I never imagined that there was any great assurance about their effectiveness, I thought it was worth trying.

Another part of the calculation had to be what I was willing to do, since each step of this rather long process, which took about a year and a half, involved new chances of disclosure of what I was doing. I was very aware from the beginning that the Administration would very likely try, and for all I knew, even succeed in prosecuting and imprisoning me to deter others from exposing these lies. I should also say that at the very beginning of this process I had been divorced for several years and had not gotten together again with my former fiancée, Patricia. But by the Fall of 1969 we were together and a major part of the risk I had to face was the very heavy burden of being separated, especially after we got married in August, 1970.

The other side of the question was what events had made it possible for me to choose to do what had to be done in terms of my capabilities. Here the influence and examples of some friends from the general anti-war movement—including a lot of people familiar to WIN readers—were clearly crucial. I met a number of them for the first time at a conference sponsored jointly by Princeton and the American Friends Service Committee in the Spring of 1968. It was a conference that started in a very jubilant mood because it took place after President Johnson's announcement that he would not run for re-election and would attempt to negotiate and cut back the bombing of North Vietnam.

But the conference ended in a very despondent mood with the assassination of Martin Luther King who was known to many of the people at the conference and whose spirit dominated the thinking of many people there. In my own life that event was bitterly ironic because in the course of that conference, I had discussed a great deal the potential that King's approach had for changing our society. I felt the loss much more personally and deeply than I might have because I had just come to think of him as a major hope.

Then in the course of the 1968 campaign I came to see Robert Kennedy as a hope, not only for ending the war, but also for moving along the liberation of many people who were oppressed in our society. His assassination was even more of a blow, as I had gotten to know him.

Meanwhile, I had become close to a number of people at the conference who suggested a good deal of reading for me including Joan Bondurant's *Conquest*

of Violence, Garibaldi's autobiography and Martin Luther King's *Stride Toward Freedom*. That set me to reading a good deal about Gandhi and nonviolence in the Fall of 1968 and throughout 1969. I was increasingly impressed by this, particularly the emphasis on truth, honesty, openness and truth-telling, both in thought and action.

As someone who had always placed a very high value on honesty, discovering the truth, understanding problems and speaking very honestly within the context of my research and employment—which meant speaking essentially to colleagues and superiors and not particularly to the public or others outside the Executive Branch—I was challenged by the notion that it was not enough simply to understand or to communicate to one's colleagues or the sponsors of research or, in this situation, to ignore the purposes one was serving. This immediately threw into question my willingness to limit what I knew to RAND colleagues or the Defense Department.

Really, in hopes of learning more about what people who were committed to this way of life were like I attended, again at my own expense and on vacation time from RAND, a triennial conference of the War Resisters International at Haverford, Pa. Since I was coming out, Dave McReynolds called me at RAND and suggested that I give a talk at the conference. It would be interesting for them to hear from somebody from RAND. At that time I wasn't willing because it would have been pretentious of me to speak on the subject to people there. I had really just begun to study it and felt very much that my own understanding was in evolution and was not what it would be in a while.

My real intent was to learn from them and to see what sort of people they were. In particular, I wanted to see whether the stereotypes of pacifists and anti-war activists had any validity—namely, that they were guilt-ridden, fanatic extremists. I picked those words, by the way, because they are words I'm familiar with; you know, they're words that are applied to me very often. I don't remember whether they are the words I really had in mind but, in any case, I found a great variety of people there of all ages and from many countries. I spent a fair amount of my time on the usual arguments that pacifists get into—pressing people about the fate of the Jews, the legitimacy of French resistance in World War II. I did meet Pastor Niemöller at the conference and had a very good conversation with him and, well, I could talk about the conference quite a bit and its effect on me, but it would take a fair amount of time.

The main influence, though, was the impression made on me by Randy Kehler whom I met briefly during the conference and liked. He gave a talk filled with hope about the growing understanding of nonviolence, especially among young people. But in the talk, he mentioned almost casually that as a result of his own expression of nonviolence, he would be going to jail very shortly as had others at the conference. His announcement came unexpectedly and was very shocking indeed. I had just been thinking, as he addressed his audience mainly of older people, that I was glad they recognized him as among the best America had, and to be jolted from that thought by the news that America was about to put him in prison was very stunning.

I talked with him later and also with Bob Eaton who actually went to prison during the conference.



lication of the Papers, his reporting talent fully emerges. Drawing upon his experience covering the Justice Department and court system for the *New York Times*, Ungar illuminates the ironies and capriciousness which characterize American justice. He takes us through the almost identical court cases in New York and Washington where judges reached polar decisions; he relates how grand juries have been misused to suit the purposes of the Nixon Administration; and he describes the widely varying interpretations of the law by the Supreme Court Justices.

Ungar concludes that "according to the textbooks, the law is objective and consistent; but in practical fact its evolution and application are a very random matter, depending largely on those charged with deciding specific issues." Having read earlier the book about Chief Justice Warren E. Burger answering his door with gun in hand, we can only nod in assent. Can there be any wonder about why our Lady of Justice is blindfolded?

A main criticism is that Ungar's book does not deal with the content of the Pentagon Papers in more than a cursory

way. But then, neither did the newspapers; and that gives us a valuable insight into the nature of the U.S. news industry. The papers *became* excited about the Papers after an American newspaper (the *Times*) for the first time in history was given a restraining order against the publication of a particular article. It should not be forgotten that this was also the first time in history that an American paper graciously obeyed such an order.

In the end the Supreme Court decided 6-3 that the *Times* and *Post* could not be restrained from publishing the Papers. But it was a hollow victory for the press. Ungar quotes one Justice Department official as saying: "We proved one thing emphatically, that there *can* be prior restraint of publication while a case is being reviewed in the courts."

While we can be happy that, at least, there was not a clear defeat for freedom of the press in the government's attempts to suppress the newspapers, we can only be angered that the papers still report the Vietnam war as if they never read or understood the Pentagon Papers they printed.

—Len Ackland



## THE PENTAGON PAPERS & AMERICAN DEMOCRACY

Conversations with Daniel Ellsberg  
(31 minutes, B/W, 16mm)

"*Distrust your leaders*" Daniel Ellsberg tells us in this brief defense of his betrayal of the Pentagon's secret policies toward Indochina. Ellsberg's modesty and hard sincerity make his *Distrust* stick to the conscience long after the film is over.

The film is a conversation with Ellsberg in his livingroom. He merely sits there, elbows on knees, looking a bit like Norman Mailer, and tells his personal story with such marvelously honest diction and intense faith in his own action that only an ambivalent, fork-tongued California lawyer could doubt the selflessness of Ellsberg's betrayal.

Folded into the conversation are clips of Ellsberg on the front lines in Vietnam with men dying around him, of Detroit under siege on the day he returned home to see his father there (amid dead blacks lying in gutters), of Ellsberg addressing a hushed rally, and of the Rand Corporation

handing over his now famous study of our 25-year involvement in Indochina which was made for the Senate Foreign Relations Committee. Also shown are rare shots of caves and underground homes where North Vietnamese families huddle, eat and sleep in pitch darkness, rather than lose their homeland to the American invaders.

The picture's subtheme is the role of the North Viet guerrillas fighting much like the American Minute Men resisting the troops of George III from hedgerows and corpses. It's a much used but still stirring comparison—that they are just as willing to die for their farms and villages as we were for American Democracy. As Ellsberg makes clear, they are dying for a reality stronger than ideas, even Communist ideas: when your home is invaded, you fight.

Ellsberg outlines the history of our Pentagon policies toward Vietnam. The government asked the Rand Corporation to make the study and Ellsberg became one of the chief students. In the end, only he and one other man had mastered the field of information. His Rand study showed the Joint Chiefs of Staff consistently girding for war in Indochina for 25 years. At the last moment the study was withheld from President Nixon because the President was about to make a new war policy speech. He announced de-escalation. Ellsberg's friends in the Pentagon, close to Nixon, told Ellsberg about the President's utter lack of intent to follow-through on de-escalation. So Ellsberg betrayed Nixon's forked tongue to the press.

Still, Ellsberg says, one cannot dump the blame entirely on Nixon for our failure in Indochina. No president, he says, has had the *courage to fail* and withdraw. Each president is corrupted by the power of secret decision-making.

In a program note, Ellsberg comments, "Since this film was made, as foretold in the interview and speech presented in it, the President has once again escalated the war."

I might add that Ellsberg never uses rhetoric, never calls the war obscene, never vents himself on the President or the Pentagon. He never clouds the issues with vindictive emotions. His every word has a ringing, tempered quality—a spirit somehow more persuasive than words.

This film is available from American Documentary Films, 336 W. 84th St., NYC 10024. Rental \$50; purchase \$250. Widespread distribution is hoped for before the election.

—Donald Newlove



effectiveness of violent threat

JK: Did Nixon carry through on any threats?

Dan: Oh yes. He sent Navy frogmen into Haiphong harbor; he sent Marines into Laos on Operation Dewey Canyon One; and he ordered bombing in Cambodia. The threat that he would use the Air Force to wipe out the North was, I understand, communicated to the Russians in mid 1969, though not to the American people. These actions convinced a number of people within the Administration that he really would carry out plans that they had already known existed. Several of them resigned when they realized this, but regretably they have chosen not to make their knowledge of these plans public.

JK: What was your role in preparing National Security Study Memorandum no. 1 on Nixon's options in Vietnam?

Dan: It was my idea to send those questions out. I wrote all the questions, all but one, strictly speaking, which was added about whether Cambodia was a significant source of supplies for the NLF. It was added by Kissinger's staff and, interestingly, led to a very sharp disagreement. The military claimed that Cambodia was an important route, really because Abrams and before him, Westmoreland, had been very anxious to invade Cambodian sanctuaries. The CIA and State were of the opinion that it was of very small importance in supplying the NLF forces. I should say that it was a supply route, but that the total amount was very small.

Since I was most familiar with the material, I was called back to Washington to read and help summarize about 1,000 pages of answers they received from all the agencies involved with Vietnam policy. This was the role of an insider and I thought that informing a new President of the range of uncertainties and controversies within the Administration was a useful mission to perform, especially so that he would not be hypnotized by some of the optimistic reports from the field and other quarters. Ironically, of course, the President ignored all this information and chose, instead, a policy of postponing defeat and prolonging the war.

So, as I was saying earlier, in the Fall of 1969, I simultaneously saw that the war required very urgent action to end it and that without such action it would not only continue, but re-escalate to levels approaching and even exceeding the violence of the Johnson Administration. Something had to be done. The question was: What could help? and What should I be prepared to do? From what I had been told, I was confident that the public impression that Mr. Nixon would end the war was mistaken. But I didn't have documentary proof. I did, on the other hand, have documentary proof that the public had been misled in almost identical fashion by earlier Administrations going all the way back to Truman. Each had lied to the public about their intentions, the scale of our involvement and the nature of our continuing the war.

So I felt that releasing this information to Congress, and through them to the public, might help the public take action. If, at that stage, before Nixon publicly committed himself to the policy I had heard described privately, there was public discussion of the deception and manipulation that had accompanied our involvement from the very beginning, the political environment might be changed so that Nixon would be tempted to change his plan and to accept extrication.

This particular plan of mine was frustrated by Nixon's announcement in October that he was going to

make a major public speech. Because of this announcement, the hearings of the Senate Foreign Relations Committee, at which I had been invited to testify and had planned to present the Pentagon Papers either in Executive session or through my own testimony, were postponed. After Nixon's speech which described his Vietnamization program very deceptively without out-and-out lying, the hearings were postponed indefinitely. JK: Did you still take the Papers to some members of Congress?

Dan: Well, at that point, I had given them to the Senate Foreign Relations Committee. But it did not appear very hopeful that present policy could be influenced by revealing past history because the public seemed fairly convinced that Nixon had adopted a new policy. That attitude was also shared by some members of the government and persisted until Cambodia at which time Fulbright again scheduled hearings. I did testify at that time [May 13, 1970], but no hearings were held on the Papers.

There seemed little hope then for using the Papers effectively, changing the public mood or otherwise affecting policy until events had convinced, or at least opened the minds of the public, to the fact that Nixon was going to continue to escalate and that Cambodia was not just a one-shot aberration in policy. After the Son Tay raid and the renewal of the bombing over the North toward the end of 1970, that possibility again began to appear and the urgency of doing whatever might help arose. So again, I had to look for other outlets in the form of individual Congressmen and eventually the newspapers.

JK: Who in Congress did you approach with the Papers?

Dan: Well, I don't want to go into details of that; that'll come up in later indictments no doubt. The Boston grand jury is still investigating the distribution process. I'm not inclined to help along their prosecution efforts. There has been mention of various transactions, but this has come almost entirely from the other people involved.

In the Spring of 1971 it seemed clear to me that Nixon was almost reproducing the policy and strategy of 1964-65 in his plans for pressure on the North. There was also the same atmosphere of manipulation, lying and (virtually) conspiracy in the upper levels of government—conspiracy with regard to the public, the Constitution and international law. This word is often abused, and I don't say it casually or for effect. In this case it is certainly justified. The important point to be made is the conspiratorial style which has characterized the decision-making of the Nixon Administration and all previous Administrations with respect to Vietnam and, no doubt, many other matters—in other words, conscious deception and concealment of actual plans and actions from Congress and the public, in clear recognition that the Constitutional role of Congress and the public role in the electoral process was being subverted.

I hoped that publication of the Papers would lead the public to understand the very painful news of how we had been deceived and manipulated. I hoped that the public would be ready to recognize that the same process was taking place again so that the public would act through Congress and otherwise—demonstrations and other expressions—to force the President to change his policies.

Incidentally, when people feel that it failed in this respect, I think they've forgotten the very strong pub-



# Changes!

## WHALES FOR WAR

In the future, even whales may be drafted for war. This is the logical conclusion from a Navy announcement Sept. 5 of the successful conclusion of Project Deep Ops, conducted at its research and development center lab in Hawaii.

The project consisted of training whales to retrieve torpedoes from the ocean bottom, with the aid of an attached acoustical beacon. Upon returning to the surface, the whales were rewarded with a handful of small fish.

The project "has shown that a simple, highly responsive and economic to-use system of recoveries to depth of at least 1600 feet can be developed using trained whales," said a Pentagon spokesman at a briefing. —J.P.

## WRL COMMITTEE & STAFF MEMBERS TAKE POSITION ON MCGOVERN

During its 50 years of existence the War Resisters League has never taken an official position on a presidential campaign. This reflects the fact that the membership of the League draws together socialists, anarchists, liberals, and radicals who agree on the need for nonviolent alternatives to war and social injustice, but who have often differed sharply on whether to vote at all, or whether to support minor party candidates. In our view nothing would be served by presenting a formal motion to the National Committee for a vote. Whether the motion was passed or defeated, it would more likely be a cause of contention than the basis for consensus.

However we feel that members of the National Committee and the staff do have the right to speak in their own names, offering their position for what value it may have in the discussion centering around the election. This statement is not an official statement of the League, and reflects only the view points of those signing it.

Because of the importance of the 1972 elections, we hope the League membership will register and vote, judging the Presidential and Congressional candidates on the basis of their willingness to end the war in Indochina, and their concern for the poor, for non-



whites, and for civil liberties for our citizens. At this time we believe George McGovern rather than Richard Nixon is the Presidential candidate most likely to end the war and take at least some steps toward compassionate change within our country.

At the same time we believe it essential that pacifists not merely ring doorbells for McGovern, but continue to press forward our own positions for total disarmament and social and economic changes more radical than presently proposed by either major party.

Finally, we reaffirm our belief that social change is generated by actions much deeper and more committed than the simple act of voting in November. The electoral process can reflect but cannot create radical social change. Voting is not, in our view, an alternative to nonviolent actions within our communities.

James Bristol  
Maris Cakars  
Jerry Coffin  
John Darr  
Ralph DiGlia  
Ann Davidson  
Barbara Deming  
Tom Flower  
Lary Gara  
Roy Kepler  
Peter Kiger  
Mark Looney  
David McReynolds

Prafulla C. Mukerji  
Tracy D. Mygatt  
Jim Peck  
Margie Reece  
Igal Roodenko  
Wendy Schwartz  
Lynne Shatzkin  
Glenn Smiley  
Jack Smiley  
Frances Witherspoon  
Sandra Wolf  
Beverly Woodward

## AUTHOR OF PRAISED BOOK AT VIGIL'S 8th ANNIVERSARY

Frances Fitzgerald, author of *Fire in the Lake*, the enthusiastically reviewed recent book on Vietnam, joined other peace people September 30 in marking the 8th anniversary of the Times Square-Vigil. Among the group were six stalwarts who rarely have missed a Saturday since the Vigil first started in 1964.

With the closing this spring of *Fiddler on the Roof*, the Vigil became the longest-running show on Broadway—with no closing date in sight. —J.P.

## TILL STRUGGLING"

*It became evident to me soon after arriving in 'Nam, that we really were trying to bomb the Vietnamese back into the Stone Age. What a litany of waste this war recalls: hundreds of thousands of Indochinese killed, millions more made refugees packed into miserable concentration camps; all those American brothers wasted in the bush, each VA hospital another chapter from 'Johnnie Got His Gun', and more, and more.*

—Tom Michaud, in his court martial statement

Tom Michaud, a 23 year old Marine deserter was found guilty September 20 by a military court of being Absent Without Leave (AWOL). He was sentenced to seven months hard labor and was given a bad conduct discharge.

Michaud, who turned himself in to the Democratic Party and George McGovern on the floor of the Democratic Convention July 13, served in Vietnam from December 1968-May 1969. He became a "self-retired veteran" in 1969.

The defense, which conceded that Tom went AWOL, tried to present evidence which described Tom's "state of mind" at the time of his desertion, which would explain why he deserted. They presented six witnesses, five of whom had been associated with the 3rd Marine Division with which Tom had served.

The military judge would only allow the witnesses to go so far and then would rule their testimony about war crimes irrelevant.

K. Barton Osborn, who was a DIA operative with the Phoenix program, which was an unsuccessful attempt to exterminate the NLF, testified about a number of the tortures used in the program. He participated in the interrogation of prisoners in which two would be taken up into a helicopter, one thrown out and the other threatened with similar treatment if he didn't talk. He also testified about how they hammered dowels into the brains of Vietnamese they were trying to get to talk.

Richard Boyle, a combat correspondent talked about other forms of resistance to the military to show that even soldiers in combat have expressed their opposition to the war. He testified about the GIs at Firebase Pace who refused to go to the front when ordered to do so. When another group of GIs were ordered to do so they also refused. This wasn't allowed into testimony.

Michaud was allowed to read a statement to the jury after he had been found guilty but before he was sentenced. It read, in part:



John Kincaid: Let's start with a question I'm sure you've never been asked. Why would you release the Pentagon Papers?

Daniel Ellsberg: "†\*&@=! . . . in the Fall of 1969 several developments in my life came together more or less by coincidence. I completed reading the Pentagon Papers, and that was crucial because the last part I read, dealing with the origins of the war in 1945-46 through 1954, really stripped the war of any legitimacy in my eyes. Before I read that part, I was not nearly so aware that Indochina, that the northern part of Vietnam at least, had been for all practical purposes independent for a year and a half before the French began a re-invasion of the country and a violent colonial re-conquest.

The U.S. was perfectly aware that in supporting the French, first just through our general aid and then after 1950 with direct aid totaling 78% of the cost of the French war, we were backing what amounted to a cynical French effort to re-impose its rule against the wishes of the great majority of the Indochinese. The fact that, as we suspected, Ho Chi Minh and some of his associates were communists as well as nationalist leaders didn't, of course, give that effort any legitimacy.

This threw into a different light all that came later, which I knew better than the earlier history. In particular, it gave me a new sense of urgency about ending an effort which I saw totally misrepresented as an effort to aid an ally to whom we had made commitments. I saw instead that the war was essentially an American war from the very beginning and that the violence there would never have approached the scale of war had not the U.S. financed the continuation of that violence and provided equipment and eventually direct combat support. So, I realized fully, then, that it was up to us to stop the killing immediately. Any thoughts of gaining a more graceful end that might take months or years longer were quite out of line. Efforts toward ending the war should be aimed toward ending it immediately and stopping what is a process of murder.

At the same time, I learned from some friends, associates who were still in the government all over Washington--State, Defense, the White House--and some in Vietnam, that Nixon was planning to continue this policy in a slightly different form, but with the same intent of avoiding our "humiliation" and postponing defeat indefinitely. I learned that he planned to reduce the size of our troop presence very gradually to a floor level that would be, nonetheless, very sizeable. Incidentally, he has drawn the troops down further than I or my informants expected. But that's the only way our predictions were not carried out. Apparently, the reason was the political pressure on him to reduce the troop involvement after the Cambodian invasion. In light of the Laotian debacle, it is clear that he went further than even he himself expected in '69 and further than his military advisors had ever said was safe in the face of North Vietnamese capabilities. These predictions, of course, have now been shown to be accurate in the effects of the Spring offensive this year which, if it has been stalemated, was temporarily stalemated only by using massive U.S. air power.

The other part of his strategy was to protect these remaining troops and those of the Saigon regime by threatening Hanoi with the renewal of unrestricted bombing that would go further than anything Johnson had ever done. If this should fail to produce a settle-

ment or cause the North to scale down its resistance, he would escalate mining and blockading Haiphong. This plan was so clearly fated to fail in deterring resistance that it seems almost incredible that Nixon and Kissinger could believe it.

JK: Was their advice primarily from the military?

DAN: No, not at all, no one gave them any assurance that a plan like this would affect Hanoi's determination or, for that matter, Russia or China's support. As far as I can tell, only Nixon and Kissinger themselves had any considerable faith that threats like this could really influence the other side.

They seem to have come into office with the belief that every nation in history has had a breaking point, or to quote Kissinger more exactly, "You can't tell me that the North Vietnamese are the first nation in history to have no breaking point." This is a fairly mad interpretation of history since his own fatherland, Germany, had no breaking point under bombing nor did the British or really any country in World War II. No country in history has ever really been broken as a nation under bombing. [JK note: In an affidavit on behalf of the defense, relating to the frequency with which classified information is leaked, John Kenneth Galbraith, who in 1945 was a director of the U.S. Strategic Bombing Survey, reported that he and George Ball had then leaked information to Drew Pearson in order to counter Air Force attempts to suppress information showing the ineffectiveness of bombing].

It is not easy to fathom just where Kissinger gets his confidence in the effectiveness of such threats or operations. According to the people who work closely with him, one of Kissinger's primary intellectual commitments is the belief in the effectiveness and legitimacy of threats and the use of force in foreign affairs. It really characterizes all his policies. At the beginning of Nixon's term, when I was working as a consultant presenting an array of alternative Vietnam policies which Kissinger had requested, I discovered in talking with him that he was particularly concerned that enough attention be given to the threat of escalation.

I told him what seemed obvious to anyone who had followed recent Vietnam history that there was no basis for any kind of belief that such threats could be effective, that the leadership of North Vietnam and their followers had been resisting both threats and the practice of violence against them for over 25 years. There was no reason whatever to believe that their resistance would lessen in the next year or two under such pressure. But I really didn't pursue the point fully, simply because I couldn't believe that he took it very seriously. I thought, in fact, that he was pressing it just for a sort of academic completeness in the alternatives to be presented to the President.

Of course, the irony was that after discussion with the President, the one alternative that would have extricated us from Vietnam without a veto from Hanoi or Saigon--that was simply setting a date for withdrawal and keeping that schedule--was deleted from the set of alternatives presented to the National Security Council at its first meeting in January. Again, I thought that was pretty much a matter of appearances and did not represent a fundamental commitment or attitude on Kissinger's part. But in retrospect, the people who worked closely for Kissinger told me that, indeed, from the beginning Nixon had no intention of adopting such an extrication program. On the contrary, he believes quite sincerely and seriously in the



## AN INTERVIEW WITH DANIEL ELLSBERG



Photo: Patricia Ellsberg

**does the President  
have an unlimited  
right to lie?**



*"I worked around the ship for about six months before deciding to go into the Service. My mother thought it would do me good; you know, 'make a man out of me'. I thought, 'I'll have to go in sometime anyway—besides, there was very little employment for me on the outside. I had the same basic reasons as most enlistees, I suppose. Like, trying to escape present surroundings and not having any other way to deal with it. Some guys figure at least they won't have to worry about money for a change. And, the idea of becoming a 'hero' and a Man appealed to a lot of us. Tell me, where does a young man go, with no education or job? He sees the military as an escape-hatch but then finds out, too late, that it too has him under control, 24 hours a day."*

He signed the statement, "Still struggling, Thomas Michaud."

After 40 minutes of deliberation, the jury sentenced him to one year at hard labor, forfeiture of all pay and allowances and a dishonorable discharge. However because of a prior agreement, Michaud will have to serve seven months months hard labor, and get a bad conduct discharge.

—LNS

## AIR FORCE CASUALTIES "CELEBRATED"

During the weekend of September 15-17, the U.S. Air Force was celebrating its anniversary. Though as a service it has only existed separately for 25 years, it justly lays claim to the history of the U.S. Army Air Force as its own. This includes Hiroshima, Nagasaki, Tokyo, and Dresden. Over 300,000 civilians were incinerated in these cities alone, as a result of Air Force bombs.

Today the Air Force is carrying out a new terrorist bombing campaign. Indochinese civilians are now becoming casualties in large numbers. Much of this bombing is planned at Hickam Air Force Base in Honolulu, Hawaii.

To bring this fact home and alert the Air Force celebrants and the people of Hawaii to reality, Donald W. Sharp and Robert C. Dickerson, II, joined the public at a carnival and air show for the anniversary. Their special message was to pour their own blood on the A-7D, an Air Force attack-fighter bomber used in Vietnam.

As the caliope music blared on, blood dripped down the side of the plane and lay in pools inside the cockpit. Ghostly handprints from the victims were added to the body of the plane.

As onlookers gaped, Sharp and Dickerson attempted to pass out statements

explaining their actions. This statement said in part: "We pour our blood at Hickam today to remind us all that the blips on a radar screen are born, have parents, play as children, love, laugh and cry, and bleed and die when our bombs and bullets are let loose upon them. The vehicles some of you drive and the papers others of you file, the fuel some of you pump and computers

others of you tend make possible this tragic reality."

As Air Force security apprehended the duo, they were handcuffed, and a truckful of airmen armed with rifles drove up and "deployed". As the two were searched for napalm and pineapple bombs, onlookers were ordered to hand back statements they had taken and to refrain from taking pictures.

The government has not yet decided on what course of action to take in the matter.

—Bob Dickerson

## "FAST FOR LIFE" ENDS ON 41st DAY

The six remaining people on a "fast for life" in New York City, which was directed against the war in Indochina, called off their water fast and sipped juice September 16. In a statement announcing the ending of the fast the group—Ted Glick, Val Hendy, Fr. Paul Mayer, Mike McCale, Lianne Moccia and Cookie Ridolfi—said "more than ever we feel a renewed determination and commitment to continue our struggle on through the fall and until true peace and liberation has been brought to the people of Indochina and America."

Although they said they were ending the fast in "hope and faith" in the American people, the fasters added, "We continue to feel that as a whole the level of seriousness of the American people is not commensurate with the serious crisis to which the people of Indochina are being subjected and which led us to begin this action."

The six, all of whom agreed on Friday to break the fast, had only taken water since August 6. Originally, there were fourteen members of the group, but eight were forced to discontinue, mostly for reasons of health. One of the original group was Dave Dellinger who stopped fasting to travel to Hanoi to pick up three POWs just recently released by the North Vietnamese.

During the forty days of the fast, members continued anti-war activities, including picketing and leafletting. On the 39th day they flew to Washington DC and protested at the re-election headquarters of President Nixon. In a

statement released that day, they said: "We strongly oppose the re-election of President Nixon who is a symbol of death and famine to the children of Indochina."

—LNS

## NEW EVIDENCE ON BOMBING OF DIKES

"To the long controversy between critics of U.S. bombing of North Vietnamese dikes and the American Administration, it is now possible to add new elements to the available evidence," Yves Lacoste, geography professor at the University of Paris, wrote recently in *Le Monde*. They are the result of a geographical analysis of the points in the dike network that have been hit by bombs.

"If the bombs were being aimed not at the dikes but at 'military objectives' then they would be more evenly spread across the (Red River) delta. The concentration of bombing attacks on the dikes in the eastern part of the delta, which also happens to be the most thickly populated and heavily farmed area of the country, can therefore be regarded as deliberately planned, for the attacks are directed against a region where they can have the gravest consequences."

"At another level of geographic analysis, a close examination of the various sectors in the eastern delta area reveals the premeditated character of the bombing."

"The bombing was directed against the vital points of this system (of dikes and dams in southern Thainginh province), and primarily against the Lan locks. Between May 24 and July 29, the locks were bombed nine times. Even after they were wrecked, three more bombing attacks were launched against this installation, which is far from any military objective, no doubt with the intention of hindering repairs."

What must be emphasized here is that in President Johnson's time, the bombing of the dikes usually stopped before the rainy season. Under Mr. Nixon there is no sign of a halt."—J.P.





STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION (Act of August 1970: Section 3685, Title 39, United States Code). 1. Title of publication: WIN Magazine. 2. Date of filing: Sept. 28, 1972. 3. Frequency of issue: Twice a month except January, July & August, when once a month. 4. Location of known office of publication: 339 Lafayette St., N.Y.C., NY 10012. 5. Location of the headquarters or general business offices of the publishers: PO Box 547, Rifton (Ulster County) NY 12471. 6. Names and Addresses of publisher, editor and managing editor: Publisher—War Resisters League, 339 Lafayette St., New York, NY 10012; Editor—David McReynolds, Igal Roodenko, Mary Mayo, 339 Lafayette St., New York, NY 10012; Manager Editor—Maris Cakars, PO Box 547, Rifton, N.Y. 12471. Owner: War Resister League, 339 Lafayette St., New York, NY 10012; Win Publishing Empire, PO Box 547, Rifton, NY 12471. 7. Known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None. 8. For optional completion by publishers mailing at the regular rates (Section 132.121, Postal Service Manual) 39 U.S.C. 3626 provides in pertinent part: "No person who would have been entitled to mail matter under former section 4359 of this title shall mail such matter at the rates provided under this subsection unless s/he files annually with the Postal Service a written request for permission to mail matter at such rates." In accordance with the provisions of this statute, I hereby request permission to mail the publication named in Item 1 at the reduced postage rates presently authorized by 39 U.S.C. 3626. (signature) Maris Cakars—Managing Editor. 10. For completion by non-profit organizations authorized to mail at special rates (Section 132.122, Postal Manual): The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes have not changed during preceding 12 months. 11. Extent and nature of circulation: (After each item the first number is the average number of copies each issue during preceding 12 months; the second number is the actual number of copies of single issue published nearest to filing date) A. total no. copies printed (Net Press Run) 8300; 8000. B. Paid circulation 1. sales through dealers and carriers, street vendors and counter sales—2300; 2000. 2. Mail subscriptions—4600; 3955. C. Total paid circulation—6900; 5955. D. Free distribution by mail, carrier or other means 1. samples, complimentary, and other free copies—400; 100. 2. Copies distributed to news agents, but not sold—300; 500. E. Total distribution (sum of C and D)—7600; 6555. F. Office use, left-over, unaccounted, spoiled after printing—700; 1445. G. Total (Sum of E & F—should equal net press run shown in A) 8300; 8000. I certify that the statements made by me above are correct and complete. (signature) Maris Cakars, Managing Editor.

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**O**n June 13, 1971, The New York Times printed the first of a series of articles and classified documents on the history of United States policy and decision-making on the Vietnam War. These documents are now known as the Pentagon Papers. The Times was able to print only three installments before further publication was halted by an unprecedented injunction obtained by the U.S. Attorney General, John N. Mitchell, who claimed that public release of the documents "prejudiced the defense interests of the United States." For the first time in America's history, a newspaper was restrained in advance by the government from publishing specific articles.

After the Times was enjoined, the Washington Post, Boston Globe, Chicago Sun-Times, Los Angeles Times and other newspapers including small-city ones like the Scottsdale Daily Progress in Arizona continued to publish portions of the Pentagon Papers as a test of First Amendment freedoms of the press. At a late-night Committee hearing, Alaska's Senator, Mike Gravel, also read portions of the Papers into the public record, and a Gallup Poll showed that 58% of the American people who knew about the Papers supported the newspapers' right to publish them.

On June 30th, the Supreme Court ruled 6 to 3 in favor of publication, with Justices Black and Douglas expressing the view that "prior restraint" on publication is prohibited by the First Amendment. Justice Black said: "The government's power to censor the press was abolished so that the press would remain forever free to censure the government. . . . Only a free and unrestrained press can effectively expose deception in government."

The New York Times won the Pulitzer Prize for its role in releasing the Pentagon Papers. Other newspaper publishers who participated in their release gave each other abundant accolades for their courage in upholding freedom of the press and the right of the American people to read about "their" government's war crimes. But the Justice Department awarded Daniel Ellsberg and Anthony J. Russo a 15-count indictment carrying possible prison sentences of 115 and 35 years, and fines of \$120,000 and \$40,000 respectively. They are now in the first stages of a trial which, if it continues, will last 3-4 months and cost them approximately one million dollars.

On July 29th, the Pentagon Papers Trial was temporarily halted by an unprecedented stay granted by Supreme Court Justice Douglas so that the defense could appeal lower court rulings upholding the government's refusal to disclose the contents of a wire-tapped conversation involving one of the lawyers or their consultants. Douglas' action made this trial the first ever to be stayed after the swearing in of the jury.

In the last court session in Los Angeles after the stay, the defense asked the trial Judge, Wm. Matthew Byrne, to discharge the jury. However, since jeopardy technically attaches when a jury is sworn in, the defense also announced to a startled courtroom that it would not move for dismissal of the trial on double jeopardy grounds if the present jury were dismissed and a new one picked. The reason: "Dr. Ellsberg and Mr. Russo really do want to have a trial on the merits of the issues."

The Supreme Court is expected to decide by about October 9th whether to hear the defense petition requesting disclosure of the wiretap. If the Court declines to hear it, the trial will start again in late October and the Judge will then rule on the defense motion for jury dismissal. If the Court decides to hear the defense petition, the Justices probably will not rule on it until early next year. If their ruling is negative, the trial will start then. However, if their ruling is favorable to the defense, the trial may come to an end because the government will probably elect, as it has done in the past, to drop the case rather than disclose the wiretap. On the other hand, given the already unusual and unprecedented nature of this trial, the government may decide that the advantages of having the trial outweigh the disadvantages of disclosing the wiretap information.

In any event, Russo and Ellsberg may not be free. If the present trial is not carried through, Ellsberg and possibly Russo will very likely face other indictments. The present indictment against them covers only the period between March, 1969, and September, 1970. That period ends nine months before the Pentagon Papers became public. A Boston grand jury is still investigating the case, particularly the distribution of the Papers. New indictments are expected against new people as well as Ellsberg and Russo.

On the other hand, if Richard Nixon is not re-elected. . . .

John Kincaid  
Arizona

September 15, 1972





The Sept. 1 issue was beautiful. I especially appreciated the report of Nma Mobit on the action taken by Phoenix women, which was thrilling and inspiring example. I know that there are many who feel the frustration and despair of having struggled so long to end this cruel and senseless war, without apparent effect. But the Phoenix women are quite right. This despair is exactly what

the Nixon Administration wants us to feel. It is "a plot to silence the peace movement by having the latter commit suicide."

The article on "Alternatives" by Bart Gerald is one of the most important ever to have been published by WIN. What an exciting idea! To organize a large cooperative nationwide. To bring together all the communities and others who are seeking to escape the System or are struggling against it, a cooperative which would "encompass necessary means of production, food, delivery, medicine, clothing, training, and initially most services now available."

Anyway, why not incorporate? Why not use one of the forms of capitalism as a means of struggling against it? ART COUTLER  
CHAPEL HILL, N.C.

Hi! I like to think of myself as a gentle and peace loving soul. I am usually astonished to find this sweet me having such violent hostile feelings toward our pet cat, whom I detest. Recently our cat made friends with an adolescent siamese cat who moved in next door. Now at this time in my life the one thing I don't need is another cat! The unwanted neighbor meows in our newly filled sand box, eats our cat's food, even has the audacity to ask me for food. So I don't

him. I ask him to leave.

This morning we got our WIN and I'd just begun reading the letter that tells us how all you folks are doing. Then my sweet husband who really and truly is gentle, loving, kind and peaceful, gave this neighborhood cat a friendly hello and rubbed and pet him. Said I, "WHAT are you DOING! dear??", and handed him the WIN. (Setting: front porch, old fashioned type).

Then our monkey came out and the cat began to stalk him. A cat will never have any luck stalking a squirrel monkey. They are much too agile and quick. I brought out some leftovers for the monkey and the cat tried to get them. The monkey grabbed some food and ran away to eat it. The cat pursued him in great haste. And my darling husband took the WIN (marked "peace and nonviolence"), folded it, and swatted the cat!!! with the WIN!! good grief!

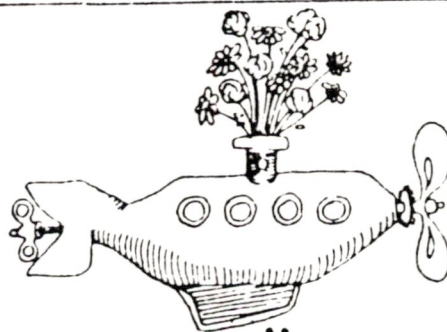
I knew it would make you moan, but I thought you'd like to hear from some people in "mixed city" anyway.

SUSAN & RICHARD  
SALT LAKE CITY, UTAH

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front cover: designed by Julie Maas  
back cover:

"Against the Common Good"  
by Francisco Goya

November 1, 1972  
Volume VIII, Number 17

Our thanks and a "keep on truckin'" to John Kincaid who did most of the work on this issue. Without his perseverance and creativity it could not have been done. No thanks to the publicity department at Simon and Schuster which kept promising photos but never sent them.

The brief quotes on the cover and scattered throughout this issue are from various versions of the Pentagon Papers. Beacon refers to the four volume Beacon Press edition, GPO means the 12 volume Government Printing Office edition and NYT is the one volume New York Times Edition. A review of the three editions appears on page 32.



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# 1973 Peace Calendar

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*WRL Midwest*, 1437 E. Brady St., Milwaukee, WI 53202  
*WRL Southwest*, 1003 Forrester NW, Albuquerque, NM 87104

*WRL West*, 833 Haight St., San Francisco, CA 94133  
*Atlanta Workshop in Nonviolence*, Box 7477, Atlanta, GA 30309

## D.C.

*Washington WRL*, P.O. Box 231, American University, Washington, D.C. 20016

## IOWA

*Ames WRL*, c/o Kitzman, Meadow Glen Rd., Rt. 4, Ames, Iowa 50010

## KANSAS

*Lawrence WRL*, 840 Kentucky, Lawrence, Kansas 66044

## MICHIGAN

*Detroit WRL*, Oakland University, Rochester, MI 48063  
*Grand Rapids WRL*, Box 1114, Grand Rapids, MI 49501  
*Kellogg Community College WRL*, 450 North Ave., Battle Creek, MI 49016

## NEW JERSEY

*Jersey Shore WRL*, c/o Erickson, 1322 Locust Dr., Asbury Park, NJ 07712  
*Newark WRL*, 366 Passaic Ave., Nutley, NJ 07110

## NEW YORK

*Broome Co. WRL*, P.O. Box 1351, Binghamton, NY 13902  
*GROPL/WRL*, 244 E RD 1, Kerhonkson, NY 12466  
*Ithaca WRL*, c/o Snyder, 66 Hilltop Rd., Danby, NY 14850  
*Jamestown WRL*, 12 Partridge St., Jamestown, NY 14701

## OHIO

*Cincinnati WRL*, 1255 Paddock Hills Ave., Cincinnati, Ohio 45229  
*Columbus WRL*, 1954 Indianola Ave., Columbus, Ohio 43201  
*Dayton WRL*, 122 Blackberry Rd., Dayton, Ohio 45431

## OKLAHOMA

*Oklahoma WRL*, Box H, Norman, Oklahoma 73069

## TEXAS

*Austin WRL/Direct Action*, P.O. Box 7161, University Station, Austin, Texas 78712  
*WRL Fort Worth*, P.O. Box 11073, Ft. Worth, Texas 76109

## WEST VIRGINIA

*Morgantown WIN*, Bennet House, 221 Willey St., Morgantown, West Virginia 26505

In addition to the above groups, there are about a dozen efforts to organize local WRL's going on around the country. These are what we could call embryo WRL's and when they reach the stage of being able to organize and work outside the WRL membership we will list them as local WRL's. If you would like to begin organizing a local WRL or would like information on the local WRL program please write to the National Office.

Fifty years ago, in 1923, the War Resisters League was founded by those who had opposed World War I, some only just released from prison. This year marks our fiftieth anniversary and will also mark fifty dramatic years in our national life, during which many groups used nonviolence to struggle for peace and social justice.

These fifty years have seen the Palmer Raids, the McCarthy witch hunt, Nixon's repression. We have lived through World War II and the Atomic Bomb, the Korean War, and we still endure the Vietnam War. But these same fifty years saw the growth of industrial trade unions with their dramatic "sitdown" strikes; they saw the leadership of A. J. Muste in the peace movement and Martin Luther King, Jr. in the civil rights movement; they saw the heroism of American blacks struggling for elemental human rights; they saw the fight for women's equality. These have been fifty years of tumult, tragedy and of resistance and hope.

The Calendar for 1973, written by Marty Jezer, will commemorate not only the WRL's Fiftieth Anniversary, but the pain and joy of the period itself, and of the many who took part in it. This is a document that we believe will earn a place in your permanent library, long after 1973 is over and the WRL has entered its second fifty years of activity. The 1973 calendar contains:

- \* a page for every week in the year
- \* a facing page with material and illustrations on fifty years of nonviolent resistance and action
- \* a listing of peace organizations and periodicals, American and foreign
- \* blank pages for notes and advance appointments in 1974
- \* 128 pages, 5 1/2" x 8 1/2", wire-bound and flat-opening, the calendar pages of which can be removed when the year is over, leaving a bound volume for your permanent library

**PUBLICATION DATE: NOVEMBER 1, 1972**

The Peace Calendar is a unique and inexpensive gift that will be in use each day and remembered the whole year through. **\$2.50 \$11 for five**

Gift orders, and a gift card, will be mailed to arrive by the winter holidays, postpaid in the U.S.

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PEACE AND FREEDOM THRU NONVIOLENT ACTION

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## THE ISSUES BEHIND THE PENTAGON PAPERS TRIAL

*revealing  
new interviews  
with Pat and  
Dan Ellsberg*

**Air Force  
security officer  
tells all**

*and much more....*



NOV 19 1972

Mr. Felt	_____
Mr. Baker	_____
Mr. Bishop	_____
Mr. Callahan	_____
Mr. Cleveland	_____
Mr. Conrad	_____
Mr. Dalbey	_____
Mr. Gelberdt	_____
Mr. Jenkins	_____
Mr. Marshall	_____
Mr. Miller, E.S.	_____
Mr. Ponder	_____
Mr. Soyars	_____
Mr. Walters	_____
Tele. Room	_____
Mr. Kinley	_____
Mr. Armstrong	_____
Ms. Herwig	_____
Mrs. Neenan	_____

NR007 CG CODED

540PM NITEL 11-14-72 EOM

TO ACTING DIRECTOR (65-74060)

FROM CHICAGO (65-5369) 1P

MC LEK SIO

THE CHICAGO PEACE ACTION COALITION PUBLICLY ANNOUNCED THAT ON NOVEMBER EIGHTEEN, A DEMONSTRATION TO BE HELD CHICAGO AT ELEVEN THIRTY A.M. FOLLOWED BY CITIZENS HEARING ON WAR CRIMES IN INDOCHINA AT NINETEEN SOUTH LASALLE, CHICAGO.

FEATURED GUESTS ARE ANTHONY RUSSO AND RICHARD FALK.

CHICAGO WILL FOLLOW AND REPORT PER PRIOR INSTRUCTIONS REGARDING PUBLIC APPEARANCES OF RUSSO AND ELLSBERG.

END

HOLD

REC-32

ST-103

97 NOV 22 1972



FBI

Date: 11/14/72

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL \_\_\_\_\_  
(Priority)

Mr. Baker \_\_\_\_\_  
Mr. Bates \_\_\_\_\_  
Mr. Bishop \_\_\_\_\_  
Mr. Callahan \_\_\_\_\_  
Mr. Cleveland \_\_\_\_\_  
Mr. Conrad \_\_\_\_\_  
Mr. Felt \_\_\_\_\_  
Mr. Jenkins \_\_\_\_\_  
Mr. Marshall \_\_\_\_\_  
Mr. Miller, L.S. \_\_\_\_\_  
Mr. Ponder \_\_\_\_\_  
Mr. Soyars \_\_\_\_\_  
Mr. Walters \_\_\_\_\_  
Tele. Room \_\_\_\_\_  
Mr. Kinley \_\_\_\_\_  
Mr. Armstrong \_\_\_\_\_  
Ms. Herwig \_\_\_\_\_  
Mrs. Neenan \_\_\_\_\_

TO: ACTING DIRECTOR, FBI (65-74060) (ATTN: DOMESTIC  
INTELLIGENCE  
DIVISION)

FROM: SAC, WFO (65-11613)

MCLEK.  
SIO

Re WFO teletype to Bureau and Los Angeles, 11/13/72.

Enclosed for Bureau is one copy of U. S. Supreme Court decision denying certiorari in ELLSBERG-RUSSO appeal with dissenting opinion of Justice DOUGLAS.

The enclosed is submitted for information.

ENCLOSURE

2 - Bureau (Enc. 1)  
1 - WFO

CAK:dam  
(3)

20 NOV 20 1972

97 NOV 22 1972

Approved: \_\_\_\_\_ Sent \_\_\_\_\_ M Per \_\_\_\_\_  
Special Agent in Charge



# SUPREME COURT OF THE UNITED STATES

ANTHONY JOSEPH RUSSO, JR., AND DANIEL  
ELLSBERG v. WILLIAM MATTHEW  
BYRNE, JR., ETC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72-307. Decided November 13, 1972

The petition for a writ of certiorari is denied.

MR. JUSTICE DOUGLAS, dissenting.

I regret that the Court does not take this occasion to lay down some further ground rules for the conduct of criminal cases involving electronic surveillance, in the sensitive area, which involves both the Fourth and the Sixth Amendments.

In *Alderman v. United States*, 394 U. S. 165, we laid down rules governing the district courts where there had been electronic surveillance of the defendant in a criminal case or where in other surveillance his words had been recorded. *Alderman* and its descendants made possible the conduct of criminal trials with fairness to all sides and with no disturbance to orderly proceedings.

The present case is one of several that have come across my desk this year involving not the surveillance of a defendant in a criminal case but the surveillance of his lawyer.

It is time, I think, that we hold that the confidences of the lawyer-client relationship remain inviolate. It is also time that we set forth the prescribed procedures in an *Alderman* type of opinion.

The problems where the lawyer is involved seem to me to be as critical as those where the defendant's privacy



under the Fourth Amendment is violated.<sup>1</sup> The ruling which I made this last summer when I granted the stay in this case was based on the premise that the teaching of *Alderman* would fully apply to a case where the Sixth Amendment rights of a defendant were imperilled.

We held in *United States v. United States District Court*, 407 U. S. 297, that electronic surveillance of internal security measures was not permissible on the basis of an order of the Attorney General, but only on judicial search warrants. We reserved decision "with respect to activities of foreign powers or their agents." *Id.*, at 322.

• <sup>1</sup> Wire-tapping, which Justice Holmes called "dirty business," *Olmstead v. United States*, 277 U. S. 477, 479, was put by Justice Brandeis in a constitutional frame of reference:

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." *Id.*, at 478.

And he added:

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Id.*, at 485.



When the argument was held last summer on the stay order, the prosecution in oral presentation distinguished that case on the ground that it involved "domestic" surveillance while the present one involved "foreign" surveillance. The prosecution seemed reluctant to enlarge on that distinction, which led me to note in the opinion I filed granting the stay that we may be dealing only with a matter of semantics. The prosecution never submitted to me *in camera* the logs in question. I have now seen them and it appears that the electronic surveillance was of a telephone of a foreign national and that the intercepted conversations in this case had nothing to do "with respect to activities of foreign persons or their agents," the question we reserved in the previous case, 407 U. S., at 322. As I understand it, the conversation was an inquiry by one of the counsel concerning wholly personal social and commercial matters. It is not conceivable to me that this conversation is in the "foreign" field in the sense the word is used in the statutes involved in the *United States District Court* case. No activity of any foreign "agent" is even suggested. We should therefore take the case to resolve what immunity the Executive Branch has in setting up schemes of pervasive surveillance of foreign nationals that is unrelated to espionage.

It is, however, said that the conversation is utterly irrelevant to the issues in the present case. How can we know? Only one immersed in building a case for the prosecution or constructing a defense can know whether an innocuous-appearing conversation would be a "link" in a chain of evidence which in time would be necessary or convenient for either the prosecution or the defense. That is why I feel strongly that, as we held in *Alderman v. United States*, *supra*, the question of relevance must be submitted for adversary hearing before the trial judge.<sup>2</sup>

---

<sup>2</sup> In *Alderman v. United States* we read:

"Adversary proceedings are a major aspect of our system of criminal justice. Their superiority as a means of attaining justice



I suspect that if that had been done here, the dispute that has delayed this trial for some months would have been quickly resolved. A grave injustice may or may not ride on the denial of certiorari today. My concern is not that, but the administration of the law. I use the word law in its largest sense--where the prosecution as well as the defense is required to live within the spirit and letter of the constitutional rules designed to keep Government off the backs of the people and to take no shortcuts because of public hysteria or political pressures.

That question concerning the applicability of the pre-trial procedures laid out in *Alderman* to the protection of Sixth Amendment claims make this case a singularly appropriate occasion for laying down the ground rules that will apply in federal trials.

MR. JUSTICE BRENNAN also votes to grant the petition for certiorari.

in a given case is nowhere more evident than in those cases, such as the ones at bar, where an issue must be decided on the basis of a large volume of factual materials, and after consideration of the many and subtle interrelationships which may exist among the facts reflected by these records. As the need for adversary inquiry is increased by the complexity of the issues presented for adjudication, and by the consequent inadequacy of *ex parte* procedures as a means for their accurate resolution, the displacement of well-informed advocacy necessarily becomes less justifiable.

"Adversary proceedings will not magically eliminate all error, but they will substantially reduce its incidence by guarding against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in and suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands. It may be that the prospect of disclosure will compel the Government to dismiss some prosecutions in deference to national security or third-party interests. But this is a choice the Government concededly faces with respect to material which it has obtained illegally and which it admits, or which a judge would find, is arguably relevant to the evidence offered against the defendant." 394 U. S. 183-184.



UNITED STATES

GOVERNMENT

# Memorandum

TO : ACTING DIRECTOR, FBI (65-74060)

DATE: 11/22/72

FROM : SAC, OMAHA (65-849) (C)

SUBJECT: MC LUK  
SPECIAL INVESTIGATIONS OFFICE

Re Bureau airtel to Omaha dated 10/19/72.

[REDACTED] on 11/14/72, that ELLSBERG canceled his speaking engagement for the night of 11/16/72, at the University of Northern Iowa, Cedar Falls, Iowa, due to the resumption of his trial.

The source will be alert for a future engagement and if ELLSBERG should be rescheduled, following his trial, the Bureau will be requested to furnish appropriate instructions as to whether his appearance should be covered.

REC 44

2 - Bureau

2 - Omaha

(1 - 65-849)

(1 - 134-361)

JDG:ckp

(4)



5 NOV 30 1972

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